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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

No. 747

RAYMOND JACKSON, AN INCOMPETENT PERSON, BY PHIL OLDHAM, NEXT FRIEND AND GUARDIAN, AD LITEM,
Petitioner,

vs.

THE CARTER OIL COMPANY, A CORPORATION, RHINA JACKSON, RUBY NORVELL, ALBERT NORVELL, AND CAROLYN NORVELL CLARK,
Respondents

PETITION FOR WRIT OF CERTIORARI

To the United States Circuit Court of Appeals for the Tenth Circuit:

Now, comes your petitioner, Raymond Jackson, an incompetent person, by Phil Oldham, next friend and guardian, *ad litem,* and prays that a Writ of Certiorari be issued to review the Decree of the United States Circuit Court of Appeals for the Tenth Circuit, entered in the above cause on August 6, A. D., 1946, affirming the Decree and Order of the United States District Court, for the Eastern District of Oklahoma.

Decision Below

The Order and judgment of the trial Court (R. 239), the opinion of the Circuit Court of Appeals (R. 243-247), is reported in 156 F. (2d) 726.

Jurisdiction

The Decree of the Circuit Court of Appeals was entered on August 6, 1946 (R. 247). Order by a Justice of this Court on the 24th day of October, 1946, extending time for filing Petition for Writ of Certiorari, until the 5th day of December, 1946 (R. 249).

The jurisdiction of this Court is invoked under Sec. 240(a) of the Judicial Code, as amended by the Act of February 13, 1925.

Preface

We trust this preface is not inappropriate.

(a) This Court will find in the record, we believe, the most flagrant conspiracy formed and executed, with an evil intent and purpose, by the wholesale use of money in corrupting the streams of justice to defraud petitioner (plaintiff), out of his 40 acres of oil land allotted to him, by the government, as a new born Freedman, which conspiracy has been successful to date. The story seems impossible until the record is read.

(b) While the amount in litigation is estimated at $3,000,000.00, likely the dominating spirit of this Court will be, that there is nothing of value worth while comparable to the "truth," and the "integrity" of the District Court, a part of the Judicial system, under the supervision of the Supreme Court.

(c) That incomparable statesman and jurist, Mr. Webster, once said, "There is nothing so powerful as 'Truth'

and often so strange". This eternal principle is clearly demonstrated in the "truth evident". "Truth crushed to earth shall rise again."

These truisms are both demonstrated in the record. Truth was crushed to earth by an apparent solemn, invulnerable decree of a court of equity. It has been redeemed resurrection by an open written confession (Affidavits R. 219-225).

(d) We have reason to believe that nothing except utter lack of jurisdiction will prevent this Court from granting the Writ prayed for.

(e) Had the Negro man "Delois" not been accidentally killed from a fall off a freight train, near Blue Mountain, Arkansas, and had Petitioner's 40 acres been worth $3,000.00 only, instead of $3,000,000.00 as estimated, this litigation would never have existed.

Subject Matter

I

This litigation involves the title, possession, oil and gas, estimated at $3,000,000.00, produced from the forty-acre allotment made to Raymond Jackson, a new-born Negro Freedman, in the Seminole Nation, Seminole County, Oklahoma. The allotment was made in 1903, soon after Raymond was born. Patent was duly issued covering said land, delivered to his father, David A. Jackson.

A few years after Raymond's birth, Davis A. Jackson was appointed his legal guardian (R. P. 3, Par. 5), and as such legal guardian had the possession, received the rents and revenue from the allotment, prior to oil production.

II

In the year 1923, Davis A. Jackson, as legal guardian, leased Raymond's allotment to E. W. Whitney, for oil and

gas purposes. Whitney assigned to the Carter Oil Company. In 1921, when Raymond was of the age of 18 years, as a result of a quarrel, his father struck him over the head, injuring him both in body and mind. The same day Raymond left home, finally reaching the Western Coast. He was an attractive vaudeville dancer, and joined a travelling vaudeville show, which he followed for a period of ten years, knowing that his land was in the possession of his father as guardian, thereby believing he would be protected. In 1928, the Carter Oil Company, as lessee, drilled five prolific oil wells on Raymond's 40 acres. Due to the shallow depths and large wells, owned by a Negro boy Freedman, wide publicity in the press was given.

III

Strangely enough, Raymond's attention was never called to the publicity, and he did not learn of the production of oil until 1931. In 1928, after oil was discovered, three negro claimants appeared on the scene; a Raymond Jackson from Kentucky, one from Colorado, a Vivian Jackson, claiming to be a widow of a Raymond Jackson from Kansas City, each claiming to be the allottee of this rich 40 acres of land. They each filed suit in equity, in the Federal Court of the Eastern District of Oklahoma, against the Carter Oil Company for the land, and for an accounting; they were all fictitious claimants—imposters. There could be but one allottee. About this juncture, it was learned that on a Rock Island freight train, moving toward Little Rock, Arkansas, a negro boy was killed, November 8, 1921, near Blue Mountain. Raymond and two other boys boarded the freight train headed for Little Rock, the train from which a negro man fell and was killed near Blue Mountain; but besides Raymond and his two companions, there were two

other young negro men on the same train, who boarded a freight train in Paris, Texas, soon after November 1, 1921, headed for Oklahoma City; there, a day or so later, they boarded a freight train moving toward Little Rock; one boy was named Lee Gary, and the other Delois. Delois was the negro falling from the train and was killed the 8th of November, 1921, near Blue Mountain (R. 139-140). More about this dead negro later. (For he became the basis of the plot for the most wicked and destructive drama ever played in a court room in this country, so far as we are advised.)

Questions Presented

IV

The record discloses that the respondents (defendants below) attached Exhibits to their answers, making *prima facie* showing that extrinsic fraud was committed not only directly upon the petitioner, but upon the Federal District Court itself, in the trial resulting in the decree of date April 18, 1932, and subsequent decrees based thereon, sought to be vacated.

(a) It was, and now is, petitioner's contention, that in the face of this recited, uncontroverted record, the trial Court could not rightfully sustain defendants' motion for a summary judgment.

(b) The consideration, judgment, and opinion of the Circuit Court of Appeals were based upon too narrow grounds. The Court should have considered the invalidity of the decrees relied upon as *res adjudicata*.

(c) If petitioner's contention in this regard is sound, then in affirming the judgment, the Circuit Court of Appeals committed prejudicial and reversible error.

The question is, under each of the foregoing, recited facts:

> Is the plaintiff precluded or estopped on any proposition of limitation or rule of estoppel?
>
> Since fraud was committed against the Court itself, is the power of the Court limited or restricted?

(d) Respondents (defendants below), having formed a conspiracy to practice fraud upon petitioner and the trial Court; to cheat and swindle petitioner out of his birthright, and his allotment as a new-born Freedman in the Seminole Tribe; and having executed said conspiracy and fraud, there was no limitation nor estoppel, either upon the plaintiff or upon the Circuit Court of Appeals, said judgments being absolutely void. The Circuit Court of Appeals had the power, and it was its duty to reverse the summary judgment and give directions to the trial Court to expunge its records of the fraudulent judgments and decrees, upon another trial, if in the event evidence is introduced disclosing the facts as alleged in the defendants' exhibits attached to the Carter Oil Company's answer.

The question presented to this Court is:

> Did the Circuit Court of Appeals have the jurisdiction, and was it the Court's duty to grant the relief sought?

(e) Where affidavits, attached as exhibits to respondents' (defendants') answer, establish a *prima facie* showing that Davis A. and Rhina Jackson, father and mother of the petitioner, entered into a conspiracy with A. S. and R. S. Norvell, Attorneys, to testify falsely in the trial; to induce a decree, decreeing title to them of their son's allotment; that their son, Raymond Jackson, was killed; that the petitioner in the action was not their son; that the said Davis A. Jackson, the father, through threats, intimida-

tion, and placing in fear of death or great bodily harm to his wife and mother of the petitioner, and of the petitioner's brothers and sisters, causing them to swear falsely in the trial of the case to the effect that the plaintiff was killed on a certain day, and at a certain place, and was then dead, and that the petitioner (plaintiff in the action) was not Raymond Jackson, the allottee of the land involved; that the affidavits of the mother and brothers and sisters of the petitioner, filed subsequent to the death of Davis A. Jackson, and the Norvells as exhibits to the motion to vacate the summary judgment, disclosing that they were induced and required to swear falsely on account of the threats and intimidation of Davis A. Jackson and his attorneys; that the Carter Oil Company, prior to rendition of said decree, joined in the conspiracy; that said conspiracy to produce and use the false testimony did induce the Court to render the decree of April 18, 1932, decreeing that Raymond Jackson was dead, and that petitioner was an imposter and not the real Raymond Jackson. If such decree, and subsequent decrees, based thereon, were obtained through fraud practiced upon the Court, they were absolute nullities. Would they support the summary judgment rendered by the trial Court, affirmed by the Circuit Court of Appeals?

(f) The over-all question presented to this Court is, under the foregoing recited facts and circumstances:

> Has this Honorable Court the power to reverse, and cause to be vacated and set aside, said order and judgment appealed from and render or caused to be rendered such judgment and decree as may be necessary and appropriate to expunge, or cause to be expunged, the record of the fraudulent decrees of the United States District Court for the Eastern District of Oklahoma, pursuant to the directions of this Honorable Court, to the end that upon a further trial of this action,

the records of said Court may be made to speak the truth?

Initiation of Litigation by and on Behalf of Petitioner

V

Judge J. T. Dickerson, one of the United States Judges for the Southern District, Indian Territory, prior to Statehood; while drilling an oil well in 1930 and 1931, near Earlsboro, Oklahoma, he was employed by a negro man, relating to some professional business, by the name of Wells, who approached Judge Dickerson and related to Dickerson that he was a friend of Raymond Jackson, giving the Judge a letter his wife had received that day, from her brother residing at Phoenix, Arizona. The letter recited that Raymond Jackson was there, and they talked about old times in Seminole County, Oklahoma. He told the Judge all about Raymond's 40 acres, and the litigation; Raymond had not then learned of the oil and of the litigation. He requested the Judge to get in touch with Raymond, and protect his interests. Judge Dickerson, through a lawyer friend in Los Angeles, contacted Raymond, questioned him fully. The Judge requested his friend that if he was convinced Raymond was the son of Davis A. and Rhina Jackson, to immediately bring him to Earlsboro, Oklahoma. His request was complied with, and upon reaching Earlsboro, Judge Dickerson had three old acquaintances interview Raymond. After satisfactory identification, the Judge made an employment Attorney's contract with him, and on the 7th day of February, 1931, filed a straight ejectment suit in the United States District Court for the Eastern District of Oklahoma, Case No. 4246, seeking to recover the 40 acres, and damages. Notwithstanding the three suits filed two years previous had been practically tried, all the testimony introduced; notwithstanding the

plaintiffs in each of the three suits were antagonistic to each other, and were all antagonistic to Raymond Jackson, the Court encouraged, and by agreement permitted, Raymond's ejectment suit to be consolidated with the three equity cases. This was strange procedure. This was prior to the new equity rules, and this alone, in effect, denied to Raymond a fair trial.

The Carter Oil Company answered, denying that the plaintiff was Raymond Jackson. Of course, Davis A. and Rhina Jackson testified that neither of the first three plaintiffs was their son. Davis A. and Rhina Jackson intervened, in Case No. 4246, and alleged that their son Raymond had been killed, and that the plaintiff in the ejectment suit, No. 4246, was not Raymond.

VI

Davis A. and Rhina Jackson and their Attorneys, the Norvells, had previously entered into a fraudulent conspiracy, with an evil eye, to practice a fraud upon the Court, and upon Raymond, for the express purpose of defrauding Raymond out of his allotment; they agreed to have the father, mother and brothers and sisters of Raymond to disown him; to go into Court and knowingly swear falsely that the plaintiff was not their son; that Raymond was killed on a freight train near Blue Mountain, Arkansas, on the 8th day of November, 1921, at the age of 18 years. The plot for this conspiracy was the fact that a negro boy had been killed on the freight train, the same train Raymond was on, near Blue Mountain, on the 8th day of November, 1921, a few days after Raymond left home.

VII

The Carter Oil Company's oil and gas lease, as aforesaid, was executed by Davis A. Jackson, Raymond's father as

guardian, in 1923. If Raymond was killed, as contended by Davis A. and Rhina Jackson, and the Norvells, in 1921, then of course the oil and gas lease having been made subsequent to his death, would be wholly void. The Carter Oil Company strenuously denied Raymond was killed, and undertook to prove, and was in a position to prove, that the negro killed on said freight train was not Raymond; this Company proved by Raymond's own testimony in Court, that in fact he was Raymond, and the allottee of said land (R. 194-195). During the trial in January, 1932, the Carter Oil Company effected a compromise with the father and mother of Raymond, and their Attorneys, whereupon the Carter Oil Company joined the conspiracy before recited herein, wholly abandoned its contention made in Court for a period of two years, that Raymond had not been killed, but was still living, and exerted its influence and power, released and paid certain important witnesses to leave the jurisdiction of the Court, and exerted all its powers to assist Davis A. and Rhina Jackson, to prove that the negro killed at Blue Mountain was, in fact, Raymond Jackson, but alleged the plaintiff in cause No. 4246 was not Raymond Jackson (R. 5-6).

(a) As part of the proof to sustain the contention that Raymond was dead, Davis A. Jackson and the Norvells purchased the consent of a woman who claimed to be the wife of the dead negro, Delois, to open the grave on the Rock Island right-of-way at Blue Mountain, Arkansas; take up the bones of the dead negro who had been buried for eight years, ship same to Wewoka, Seminole County, Oklahoma; the Jacksons and Norvells burying the bones in the private graveyard of the said Davis A. Jackson (creating a grave situation). The record shows that the Jacksons and the Norwells agreed to pay the said "Delois"

woman, in consideration for her consent, $14,000.00. $7,000.00 was paid in cash (R. 175-176).

(b) Lee Gary's affidavit (R. 139) disclosed that he and the negro boy called Delois, who was killed, boarded a freight train in Paris, Texas, and proceeded toward Oklahoma City; a short time after arrival, boarded a freight train going toward Little Rock, Arkansas. Before reaching Booneville, Arkansas, three other negro boys got on the same train. That the negro boy who boarded the train with affiant at Paris, Texas, and also at Oklahoma City, known as Delois, was riding near him and fell between two cars and was killed near Blue Mountain; and he was not Raymond Jackson. Lee Gary was held as a witness by and for the Carter Oil Company, in a hotel in Tulsa, paid $5.00 a day for about three weeks, was carried to Muskogee, where the case was being tried, held in a hotel, and expenses, plus per diem, paid by the Carter Oil Company, and was later notified by the evidence man of the Carter Oil Company, that the case had been compromised, that he would not be needed as a witness; the Carter Oil Company's Agent paid Gary's expenses to Arkansas, purchased and gave Gary a new Ford car to prevent him from testifying.

(c) Another witness, V. C. Henry, living in Elk City (R.-137), Oklahoma, was to appear at the trial under agreement with Davis A. Jackson and the Norvells, to testify in their behalf. The Carter Oil Company contacted this witness, V. C. Henry, who formerly lived at Blue Mountain, and was a member of the Coroner's Jury, concerning the dead negro's body. The Carter Oil Company's Agent met said witness by appointment, gave him $500.00 in twenty dollar bills, for which he secured his promise to the effect, that a day or two before the case was to be tried, to write a letter to the Norvells that he had

decided he could not attend the trial; he did write such letter, and did not attend the trial. (He lived more than 200 miles from the place of trial and was not subject to subpoena, and forced to attend.) It was then too late to take his deposition.

VIII

Many other exhibits were attached to Carter Oil Company's answer of similar import (R. 102-176). The substance of the 51 affidavits attached as exhibits to the Carter Oil Company's answer, about one-third disclosed large sums of money paid, in addition to fees and expenses, in bribing witnesses to leave the jurisdiction of the Court, and others to remain outside, are attached in an appendix to this petition, for the convenience of the Court.

IX

The Restraint and Fear Released

Davis A. Jackson died in 1939. The Norvells died about two years later. In 1943, Rhina Jackson, wife of Davis A. Jackson, deceased, mother of Raymond Jackson, and Aaron Jackson, Roxie Jackson Gilmore, Myrtle Jackson Hill, and Booker Jackson, brothers and sisters of Raymond Jackson, all executed and filed affidavits, attached as exhibits "A, B, C, D, and E," to petitioner's motion to vacate summary judgment (R. 219-225). Affidavits of the family, taken and filed, after they were free from restraint and fear (R. 219-225), are included in the appendix.

These affidavits, in substance, show that during the litigation, disclosed from the record beginning in 1928, resulting in the first decree, April 18, 1932, that the said Davis A. Jackson, through said evil conspiracy, intimidation, coercion and threats to kill, or to do great bodily

injury upon the affiants respectively, at the hands of the said Davis A. Jackson, compelled each of them to refuse to recognize Raymond and to fraudulently and falsely testify in Court that Raymond was killed, when each and all of said parties, at the time, knew positively well that he was not killed, and that he was the son of Davis A. and Rhina Jackson, and a brother to the brothers and sisters of each and all of their other children; that each and all of said affiants, by reason of said threats and intimidation and through fear, did testify falsely in the trial resulting in and inducing the decree bearing date of the 18th day of April, 1932, and subsequent decrees based thereon. All of which false testimony is acknowledged in said affidavits. That the conspiracy and the false testimony were concealed from the Court, the petitioner and his Attorneys, until disclosed in said affidavits.

X

(a) Petitioner avers that he has never had a full trial on the merits of his action, only a partial trial: that in January, 1932, he was placed on the witness stand for the purpose of testifying, telling his whole story in detail just before six o'clock p. m., and after the preliminary questions, the Court adjourned until after dinner; after the Court reconvened, Mr. B. B. Blakney, leading counsel for petitioner, announced to the Court that counsel for petitioner had concluded to rely upon their motion theretofore filed to dismiss the action for lack of jurisdiction. It appears the motion was well taken. The Court took said motion under advisement and finally overruled the same and subsequent thereto rendered the decree of April 18, 1932. Raymond was never given an opportunity *to testify in his own behalf* in that trial (R. 84-85-86). Other material witnesses were excused and not placed on the stand.

(b) Petitioner states that no Appellate Court has ever considered and adjudicated the merits of his action upon the full facts and the pertinent law, at any time; that the only consideration, decision and judgment by any Appellate Court was in the consideration and judgment upon appeal from order or a judgment sustaining the motion for a summary judgment, affirmed by the 10th Circuit Court of Appeals, which judgment petitioner now seeks to have reviewed by this Honorable Court, by virtue of this petition and application for Writ of Certiorari. Petitioner states that it is true that one of the negroes designated as the "Kentucky" Raymond Jackson, prosecuted an appeal from an adverse decree rendered by the District Court in the Eastern District of Oklahoma, to the Circuit Court of Appeals for the Tenth Circuit. Quoting from the opinion in that case, the Court said, "In the opinion in this case, the 'Kentucky' Raymond appealed, and the decree was affirmed."

(c) *Jackson* v. *Jackson,* 67 F. (2d) 719, petitioner herein, was in no way a party to the appeal of the "Kentucky" Raymond Jackson. Strangely enough, the Appellate Court, in writing the opinion in this case, cited *supra,* through oversight, and, we must assume, inadvertence, utilized about one page of the opinion in reciting facts and condemning the petitioner herein, apparently adjudicating all issues against petitioner, when he was not a party to that action, nor before the Court in any way.

XI

That no money has been disbursed by the Carter Oil Company as claimed in Paragraph VIII of its answer (R. 20), except to itself and to the other parties to the litigation, adverse to petitioner and their privies.

XII

Petitioner states that the affidavits made and filed by his mother, Rhina Jackson, his brothers and sisters, were attached to his motion or "Bill of Review" (R. 214), to vacate and set aside the summary judgment, marked exhibits "A, B, C, D, and E" (R. 219-225). That no Court except the trial Court upon consideration of the motion for a summary judgment, filed by respondents, has ever considered or adjudicated upon the effect of said affidavits with relation to any issues or rights adjudicated in any of said litigation.

XIII

Specification of Errors to Be Urged

The Circuit Court of Appeals Erred:

I

The Appellate Court erred in limiting and confining its decision and judgment solely to the narrow ground of the issue joined upon the motion of petitioner (plaintiff below) to vacate and set aside the summary judgment, ignoring the basis underlying this issue.

II

The Appellate Court erred in not considering the invalidity of the decree of April 18, 1932, on account of extrinsic fraud practiced upon the petitioner, and upon the Court itself, precluding the petitioner from developing his case and in denying to him his day in Court.

III

The Appellate Court in its opinion, speaking of the appeal, said:

> "It is from the order denying the motion to vacate and set aside the summary judgment entered on May 4,

1944. And therefore, the only question open to review is whether the denial of that motion constituted error."

IV

The Appellate Court erred in holding and deciding in effect that the motion in the nature of a "Bill of Review" (R. 214) was limited to the question that petitioner did not have a fair opportunity to present his newly discovered evidence at the trial, May 4, 1944. The pleading labeled a motion, in the nature of a "Bill of Review," was broad enough to challenge the summary judgment as well as the decree of date April 18, 1932.

V

The Appellate Court erred in not considering and giving appropriate legal effect to the 51 affidavits brought into the case by respondents (defendants below), attached to respondents' answer, and made a part thereof. It is immaterial for what purpose defendants had in mind, undisclosed, in bringing the exhibits into the case, as part of the defendant's pleadings, they were before the Court for all legitimate purposes. If these exhibits disclose that the decree entered on the 18th of April, 1932, were absolutely void on account of fraud committed against the petitioner, also against the Court itself, then it was the duty of the trial Court, as well as the duty of the Appellate Court, to accord to these exhibits the proper legal effect.

VI

The trial Court, as well as the Appellate Court, committed error in their decisions and judgments, respectively, in assuming that the decree of April 18, 1932, and the subsequent decrees based thereon, were valid and *res adjudicata,* in the face of the undisputed *prima facie* record to the contrary.

VII

The opinion of the Court of Appeals, (R. 246), recited:

> "It thus appears that evidence was adduced and heard in connection with the motion. But the evidence is not in the record. For aught the record discloses, the evidence may have failed completely to sustain the material allegations of fact contained in the motion. It may have negated the truth of some of the allegations."

In this respect, we believe, the Appellate Court was in error, for the only evidence tendered was the five affidavits, attached to the motion, in the nature of a "Bill of Review" to set aside the summary judgment. The affidavits were made a part of the motion, marked exhibits "A, B, C, D, E, and F," identified in the main as affidavits of the Mother, brothers, and sisters of petitioner, made and filed after the death of Davis A. Jackson, and after the death of the two Norvells, and after the affiants were freed from bondage, so to speak, freed from restraint, freed from intimidation, and freed from fear. The respondents filed their motion (R. 229) to dismiss the motion in the nature of a "Bill of Review," which was not sustained by the Court, thus leaving the pleading intact, with the affidavits a part thereof, before the Court. Besides, the record fails to disclose any intimation that other testimony or evidence was introduced on the motion for a summary judgment. The recitation in the decree, "that plaintiff offered evidence," more likely had reference to the affidavits attached, and made a part of the motion. The Clerk of the Court, in his certificate, states:

> "Do hereby certify that the annexed and foregoing is a true and correct copy of the original pleadings and proceedings in Civil Action No. 1128, * * *, as is called for in the designation of the contents of the record filed herein."

It would seem that the term "proceedings" is broad enough to negative that any additional testimony or evidence was introduced and admitted, other than the affidavits attached to petitioner's motion, in the nature of a "Bill of Review." Thus, we believe the Court committed error in its interpretation that other evidence was introduced, affecting and destroying the legal effect of the motion and exhibits, especially as this is a very narrow and technical ground of decision, in the face of so much fraud practiced upon the Court.

VIII

In the opinion, the Appellate Court stated:

> "Furthermore, we are not mindful of any rule in the law of evidence, making ex parte affidavits of that kind admissible, if they had been available at the trial, and tendered in evidence."

This is beside the point; that *ex parte* affidavits are not generally competent evidence in a plenary trial, upon an issue joined involving substantive rights, may be conceded. We have been under the impression that under equity rule, 56 affidavits may be used by either party, first in support of motion for summary judgment, to the effect that there is no substantial or genuine issue as to any material fact; on the other hand, affidavits may be used in opposition to a motion for a summary judgment; therefore, we believe, and so allege, that the Court was in error in its ruling that the affidavits attached to the motion, in the nature of a "Bill of Review," disclosing facts *prima facie* true, were not sufficient to authorize the Court in denying respondents' motion for a summary judgment.

XIV

Reasons for Issuing the Writ

I

The first and best reason is, because a vicious conspiracy was formed and executed to undermine the District Court, and a flagrant fraud was committed against the Court, and the integrity of the Court was and is in jeopardy.

II

Extrinsic fraud, as disclosed from the affidavits attached to the respondents' answer, as exhibits, committed against the petitioner, whereby through judicial process he was swindled out of his allotment by respondents. We charge no wrong, however, against the Court.

III

That if this Honorable Court has the power of supervision over the inferior Courts, it cannot afford to, in effect, condone this fraud, bribery, perjury and corruption without eradicating the fraudulent judgments from the judicial records of the District Court.

IV

To fail to expunge the judicial records, of these judgments obtained as a result of the fraudulent conspiracy, corruption, bribery and perjury, would in effect be condoning the fraud and permitting the respondents to become the beneficiaries of their own intentional fraud.

Wherefore, petitioner respectfully prays that a Writ of Certiorari may be issued by this Honorable Court to the end

that said judgments and proceedings may be reviewed in the interests of justice.

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GEORGE CAMPBELL,
A. W. G. SANGO,
J. F. BRADLEY,
Of Counsel.

MEMORANDUM BRIEF

We feel that it is appropriate to cite and quote briefly from two or three cases, including a rather late and exhaustive opinion from this Court, which we shall presently cite, and briefly quote.

The Trial Court, in sustaining the motion for a summary judgment, did so upon the assumption that the decrees which we attack, were valid and are *res adjudicata.* Of course, if this assumption was justified, in the face of the undisputed record, under the exhibits brought into the case by the defendants, making a *prima facie* showing to the contrary, then doubtless the summary judgment was proper. To the contrary, if the respondents (defendants below), in their answer, including exhibits, in attempting to make a defense of *res adjudicata,* disclosed that the decrees they relied upon were obtained by and on account of extrinsic fraud, not only upon the petitioner alone, but also extrinsic fraud practiced upon the Court, then such decrees were utterly void, and would not sustain a motion for summary judgment.

It is true the Court would not have been justified in vacating the judgments upon the affidavits attached to defendants' answer, because these exhibits would not be competent evidence for that purpose, but we do understand, under equity rule No. 56, and in fact under the practice prior to this rule, affidavits may be used in support of a motion for a summary judgment, to show that there is no substantial issue of fact to be tried; to the contrary affidavits may be used in opposition to a motion, and affidavits for a summary judgment tending to show that there is a genuine issue of fact to be determined.

The respondents, in their pleadings to obtain a summary judgment, showed affirmatively by their answer, at least

"prima facie" showing, that they were not entitled to a summary judgment. In other words, they disclosed affirmatively and made a *prima facie* showing that the judgments they relied upon as *res adjudicata* were absolutely void, in fact, no judgments at all, if they were obtained by extrinsic fraud practiced upon the Court in obtaining the judgments.

In the case of *Hazel-Atlas Glass Company, Petitioner,* v. *Hartford-Empire Co.,* reported in 322 U. S. 238-271, 88 L. Ed. 1250, under Headnote 2, this Court said:

> "From the beginning there has existed alongside the term rule, a rule of equity to the effect that under certain circumstances, one of which is after-discovered fraud, relief will be granted against judgments regardless of the term of their entry. *Marine Ins. Co.* v. *Hudgson,* 7 Cranch 332, 3 L. Ed. 362; *Marshall* v. *Holmes,* 141 U. S. 589, 35 L. Ed. 870, 12 S. Ct. 62. • • • But where the occasion has demanded, where enforcement of the judgment is 'manifestly unconscionable,' *Pickford* v. *Talbott,* 225 U. S. 651, 657, 56 L. Ed. 1240, 1246, 32 S. Ct. 687, they have wielded the power without hesitation."
>
> "Every element of the fraud here disclosed demands the exercise of the historic power of equity to set aside fraudulently begotten judgments."
>
> "But even if Hazel did not exercise the highest degree of diligence Hartford's fraud cannot be condoned for that reason alone. This matter does not concern only private parties. There are issues of great moment to the public in a patent suit. *Mercoid Corp.* v. *Mid-Continent Invest. Co.,* decided January 3, 1944 (320 U. S. 661 ante, 376, 64 S. Ct. 268); *Morton Salt Co.* v. *G. S. Suppinger Co.,* 314 U. S. 488, 86 L. Ed. 363, 63 S. Ct. 402. *Furthermore tampering with the administration of justice in the manner indisputably shown here involves far more than an injury to a single litigant."* (Italics ours.)

The conspiracy and fraud in the case at bar was unique. First, the conspiracy was formed between Davis A. Jackson, the father, and his two lawyers, the Norvells; and what was this conspiracy? It was that they were to join their efforts and talents; Davis A. Jackson was to go into Court and disown his own flesh and blood and testify under oath that Raymond was killed on a freight train near Blue Mountain, Arkansas, the 8th day of November, 1921. There was a negro killed on that day by falling from that train, but it was not Raymond. The father and his Attorneys knew at the time that it was not Raymond that was killed. Davis A. Jackson was to do more than that; through intimidation and threats of great bodily harm, he was to make his wife and all of their children to disown Raymond and refuse to recognize him, as her son, and as brothers and sisters to the other children. He still was to do more; through intimidation and threats, he was to compel his wife and children to go into open Court and to commit perjury, which they did, and which they concealed from Raymond, his Attorneys and the Court, for some time after Davis A. Jackson and the Norvells had died.

The Norvells lived for two or three years after their client died, and it was not until after their death that the mother, brothers and sisters felt free to divulge the well-guarded secret.

Listen to part of Rhina Jackson's affidavit:

> "Affiant further states that at the trial of the lawsuit pertaining to the property in the United States District Court at Muskogee, Oklahoma, upon the *advice* of attorneys Norvell and Norvell, and the commands and directions of Davis Jackson, her husband, against her will she was compelled to testify in open Court that Raymond Jackson was not her son, although she knew the said testimony was false."

The Norvells were conveyed an undivided one-half of the royalty, in consideration for carrying out their part of the conspiracy. They did the legal work, as well as the illegal, and as quoted above, Rhina Jackson testified against her will, under the advice of Norvell and Norvell, and under the command of her husband she was compelled to testify that Raymond Jackson was not her son, although she knew her testimony was false, and she so states.

In what manner could wrongs be committed against the judiciary with a more destructive effect than as disclosed in this record. May we emphasize our thoughts and argument by adopting and quoting the language of this Court in the case quoted from:

> "It is a wrong against the institutions set up to protect and safeguard the public, *institutions in which fraud cannot complacently be tolerated consistently with the good order of society.* Surely it cannot be that preservation of the integrity of the judicial process must always wait upon the diligence of litigants. The public welfare demands that the *agencies of public justice be not so impotent that they must always be mute and helpless victims of deception and fraud.*" (Italics ours.)

In addition to the foregoing opinion from this Court, we cite the following authorities:

Mr. Wells, in his very useful work *Res Adjudicata,* says (Section 409):

> "Fraud vitiates everything, and a judgment equally with a contract, i.e., a judgment obtained directly by fraud, and not merely a judgment founded on a fraudulent instrument; for, in general, the Court will not go again into the merits of the action for the purpose of detecting and annulling the fraud."

We also cite 34 Corpus Juris, under the Chapter on Judgments, Section 741. The author cites a number of cases from this Court.

The Carter Oil Company for over two years contested the issue with Davis A. Jackson and the Norvells to the effect that the negro killed on the freight train near Blue Mountain was not Raymond Jackson; a short while before the trial ended, some one connected with the trial suggested, we are told, probably the Trial Judge, that a compromise between the Oil Company and the Norvells should be effected. The main participants in the "drama," after a little discussion, had but little difficulty in reaching an agreement, in which Raymond was not consulted, but vitally affected. The Carter Oil Company ascertained by paying in cash to old man Jackson and the Norvells, a much smaller amount likely, than it had paid out in the litigation, to-wit: $25,000.00, it could have judgment entered of record, on its face vesting a valid title to the oil and gas lease, carrying 7/8ths interest in the oil and its title quieted; on the other hand old man Jackson and the Norvells were satisfied to receive a cash bonus of $25,000.00 and a decree vesting and quieting title to the royalty in them, and both of these antagonists theretofore, made it certain that Raymond was decreed the dead negro, since November the 8th, 1921. Immediately upon reaching this satisfactory agreement, the Carter Oil Company wholly abandoned its contention made for more than two years, both in Court and out of Court, and eagerly joined the Davis A. Jackson and Norvells conspiracy which had been well planned and consistently and effectively prosecuted. Old man Jackson became a traitor to his own flesh and blood through bribery and perjury. On the other hand the Carter Oil Company joined this criminal conspiracy, became a traitor to its landlord, Raymond Jackson, by selling him out, lock, stock and barrel.

Can this Honorable Court imagine a more perfect and complete conspiracy and one more reprehensible and debased? The worst feature of the whole thing, it was executed largely through the proceedings of the court and was approved by the District Court, doubtless without the knowledge of its deception and fraud.

Of course if this Court has the power, and we believe it has, it will not impliedly condone this conspiracy and fraudulent decrees, by perpetuating them in the judicial record of one of its subordinate courts, a part of the Judicial system of the United States.

Wherefore, it is respectfully submitted that this petition for Writ of Certiorari should be granted.

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APPENDIX

Below, we are including in this Appendix, for the convenience of the Court, the substance of the 51 affidavits, attached to the Carter Oil Company's answer (R. 102 to 176), also the affidavits of the Jackson family executed and filed subsequent to the death of Davis A. Jackson, and his Lawyers (R. 219-225):

"I was well, personally and intimately acquainted with all of the family of Davis Jackson; went to school with the children of Davis Jackson including Raymond Jackson and used to play ball and other games as country children do and associated with Raymond Jackson practically every day and was well acquainted with the *peculiarities* of Raymond. * * * Just a few days before the trial started at Muskogee in this case Mr. Spence Norvell, an attorney at Wewoka, came to me and requested that I testify in the trial that this boy who was at that time known as 'California' Raymond was not the true Raymond Jackson, the son of Davis and Rina Jackson and the identical person I had known all these years as Raymond Jackson. I was certain at the time Mr. Norvell talked with me that he knew this boy was the right boy and laughed at him suggesting that I testify against this boy. He told me at that time that he would pay me well for my testimony and would in addition pay all of my expenses in the case. * * *

"* * * While we were at Muskogee at the trial Davis Jackson gave me $10.00 and when I returned to Wewoka, Norvell and Norvell gave me a check for $10 and told me that Davis Jackson would take care of the rest of it. * * *

"During the trial of the case at Muskogee I talked with Aaron Jackson, son of Davis Jackson, and he told me at that time that he really believed that this California Raymond was his brother.

"My purpose in making this affidavit is that I know that this Raymond Jackson is right in his contentions and is lawfully entitled to his property and there has

been an injustice imposed on him by many people who knew better and I do not desire to continue to be a party to any such fraud and wish to rectify and correct my former statements given in testimony in this matter. * * *"

Approximately one-half of these affidavits were taken before the United States Commissioner W. P. Smith, under Judge KENNAMER for the Northern District of Oklahoma.

Affidavit of Henry Smith (R. 104-105) states he is a brother-in-law of Davis Jackson, having married Flossie Cudjo, a sister of Rhina Jackson; visited in the home and family many times; was well acquainted with Raymond Jackson and knows him to be the California Raymond Jackson, the son of Davis and Rhina Jackson of Wewoka. He then states:

"He (Davis Jackson) asked me to appear at the trial and testify on his behalf that this was not the right boy, but I refused to do so. He then suggested that if I would stay away from the trial and not testify in behalf of the boy that he would take care of me and fix me up in good shape. I am certain that I understood what he meant and relying on promises that he would take care of me financially to where I would not have to worry; I got in my automobile and drove to Little Rock and spent the time fishing on Little River during the time of the trial. Immediately prior to the time of the trial and after the time he talked with me on numerous occasions carried groceries, bread, pies, cakes, candy and many other articles including fruit of various kinds to my home and gave them to my children and made every effort to keep me and my family pacified in order to prevent our testifying. * * *."

Affidavit of C. D. Gulley (R. 106-107) who resides at 617 South Philadelphia Street, Shawnee, Oklahoma, states he is 34 years of age; that from 1910 until 1914 he was personally and intimately acquainted with Davis Jackson's

family including Raymond and associated with and played with Raymond Jackson during that period.

"• • • From 1910 until 1914 I was personally and intimately acquainted with all of the Davis Jackson family including Raymond Jackson and associated and played with Raymond Jackson practically every day during the four years I lived at Wewoka. I have visited in the Davis Jackson home many times.

"The Raymond Jackson who is present at the office at 306 Federal Building, Tulsa, Oklahoma, at the time of making this affidavit, who was formerly known as the California Raymond Jackson, is one and the same identical person as the Raymond Jackson enrolled on the rolls opposite No. 49, and is one and the same identical Raymond Jackson that I knew as the son of Davis and Rhina Jackson of Wewoka and the same Raymond Jackson with whom I associated and played from 1910 until 1914 at Wewoka, Oklahoma.

"• • • 'That, of course, you know Raymond as you used to play with him and you know that he is my boy, but that he had to win this lawsuit, that if he (Davis Jackson) did not deny this boy he would get in bad as he had already testified in the case denying the identity of the boy.' He talked with me about an hour and told me that if I would go to Muskogee at the next hearing and take the witness stand and testify that this Raymond was not his boy that he would pay me the sum of $1,000.00 stating that if he won the case he would get enough money out of the boy's property to justify him paying me the sum of $1,000.00 for my testimony. • • •"

Affidavit of Tom Sango (R. 107-108) states that he is 70 years of age, resides in Seminole, Oklahoma; that he is an uncle to Rina Jackson and Davis Jackson and has known them all their lives, that he has been personally and intimately acquainted with Davis Jackson's family for the last 50 years and has known Raymond Jackson all his life and knows of his own personal knowledge he is a son of affiant's

nephew and niece Davis Jackson and Rhina Jackson of Wewoka, Oklahoma.

"* * * Immediately prior to the hearing in this case at Muskogee, Oklahoma, in 1932, my nephew Davis Jackson came to me and admitted this Raymond was his son and stated that he could not afford to admit it and asked me to help him out in denying his identity. Davis Jackson said in the presence of Raymond and myself while we were all in the home of his sister Ida Grayson * * * Davis Jackson told me that if I would stay with him and deny the identity of this boy he would fix me out *all right* and that I would not have to worry anymore. I told him — would study the matter over, but I convinced him then that I would not consider it and he never talked to me after that. * * *"

Affidavit of T. S. Anderson (R. 110-111) states he is 33 years of age and resides at 825 East Noble Street, Oklahoma City, Oklahoma, and that he has known Raymond Jackson all his life.

"* * * At the time of the trial at Muskogee in which Raymond's identity was involved I was present and testified. While at that trial some colored man, whose name I am unable to recall, but whose face I would recognize, came to me and tried to bribe me to testify for Davis Jackson against Raymond and offered me $100.00 if I would testify for them instead of Raymond. This same man told me at that time that Davis Jackson and his lawyers were paying all of their witnesses and paying them well to testify against Raymond and that I might as well get mine that way. * * *

"* * * I am absolutely sure that this boy is the son of Davis Jackson and Rhina Jackson of Wewoka, Oklahoma."

Affidavit of J. F. Franklin (R. 111-112) states he lives near Maud, Oklahoma, and is 51 years of age and,

"* * * I was living there in 1917 when some people by the name of Bradshaw and Williams came into that neighborhood and with them they had a boy who they

called 'Cush' and the Williams and Bradshaws stated at that time that they brought this boy from over close to Wewoka, Oklahoma, and that Cush was not their child but belonged to someone close to Wewoka. At that time he appeared to be about 17 or 18 years old, at least that would by my judgment about it. * * * I know of my own personal knowledge that the Raymond Jackson who is present at the taking of this affidavit is one and the same body who was down there with the Bradshaws and Williams and stayed with Geo. Hardman and Geo. Durfield.

"* * * Mr. Norvell stayed in the car but had a colored man with him who talked to me aside from the car and told me that Mr. Norvell was willing to pay me for testifying and asked me how much it would take to get me to testify for them against this boy. I still refused and they still wanted me to say that he was Walter Williams and that I knew he was Walter Williams and not Raymond Jackson. * * * As they were leaving the colored man with Mr. Norvell said again that any time I decided to testify for them the money was ready for me. * * *"

Affidavit of Bolton Blanton (R. 114) states he is 32 years of age; lives near Wewoka, Oklahoma; was raised and lived practically all his life within one mile of Davis Jackson's family; attended school with all of their children, including Raymond.

"* * * Mr. Haulsee talked more to me than any of the lawyers and said 'That if any of the lawyers asked me that if I believed that was Raymond Jackson dug up, to tell them yes.' Mr. Spence Norvell made the same suggestion. * * *

"Since the beginning of this case to the present time I have been paid by Davis Jackson and his attorneys approximately $100.00, $150.00 or $200.00.

"Davis Jackson told me 'You Blantons stay with me and help win this case and I will give you lots of money.'

"I know of my own personal knowledge that the Raymond Jackson who is present at the taking of this affidavit at the office of 306 Federal Building, Tulsa, Oklahoma, is the true Raymond Jackson and the son of Davis and Rhina Jackson of Wewoka, Oklahoma."

Affidavit of Charlie Walters (R. 131) states he has lived in Blue Mountain, Arkansas, since 1893.

"* * * I was called as a juror to hold an inquest about December, 1921. The inquest was held in a box car near the depot in Blue Mountain. The inquest was conducted by Clabe McCormick, *Just* of the Peace. * * *

"* * * The body was the same color of Raymond Jackson that I saw today. He wore *course* work shoes about 9 or 10 in size. The body had no coat on at any time when I saw it.

"I went to McAlester and testified and about a month thereafter I received a check for $100.00 from Carter Oil Company. I had already had my expenses paid.* * *"

Affidavit of Luke Walls (R. 133-134-135) states he lived at Blue Mountain and is 60 years of age. He owns his home and lives just west of Blue Mountain near where the unidentified negro was killed. After an inquest was held, the negro was buried by affiant, Bedfore McKinnie, Bill Blaylock, Claude Corley and other railroad laborers.

"* * * This negro wore the common blue overalls with jumper and *course* work shoes. I know Raymond Jackson and this dead negro was not Raymond Jackson. The clothing of the dead negro was examined and some cigarette papers, matches and gin receipts taken out of the pockets. This was in November of 1921.

"I was present when Brock Nunn and Charlie McCormick both of Blue Mountain, Ark., and Amos Adams of Fairfax, Oklahoma, dug up the bones of this dead negro on March 20, 1929. * * * Raymond *Jackson's* people stopped at my home and stated that

they did not believe this dead negro was Raymond Jackson. They got water at my house. I knew about the investigation and preparation for the lawsuit in Oklahoma. I know many of the witnesses—they spent money like 'drunken *sailrs'* making up this case. I was paid $350.00 and my expenses to testify. Artie Cotner was paid $250.00 and his expenses and was never called to the witness stand. Charlie Walters was paid for his time and settled with and later received a check for $100.00 from the Carter Oil Company. I know a man who knew all about the coroner's jury and knew possibly more than any other witness about the death of this negro who was paid $500.00 to stay without the jurisdiction of the court. I know men who were paid $200.0 each and their expenses in this case that never even knew either the unidentified negro or Raymond Jackson.

"* * * I know something about the coat marker When this coat marker first appeared the name —— Jackson' was written in lead pencil—later it turned—written in ink. Nobody ever heard of or saw this coat marker until considerable interest developed in the Raymond Jackson case."

Affidavit of Claudie Corlie (C-m. 135-136) states he resides at Havana, Arkansas, that on or about the 7th of November, 1921, he was working on the section at Blue Mountain for the C. R. I. P. Ry. Co., and that the negro boy was carried to Blue Mountain and later an inquest was held.

"* * * This negro was dressed in blue overalls and an overall jumper. W. A. Blaylock, Bigelow, Arkansas, Jack Swinford, *Purcelle,* Oklahoma, and Ivan De Witt now deceased assisted me to bury this unknown man. Later years after—I think it was in the fall or winter of 1927, W. M. Haulsee of Wewoka, Oklahoma, approached me and asked regarding this negro whom we buried on the railroad right of way—he asked me to describe the negro. I told him that I knew but little about negroes but judged this negro to have been about

25 or 30 years of age—that he weighed around 140 lbs. and Mr. Haulsee inquired if this negro could have been about 18 or 20 years old and I told him yes—On leaving Mr. Haulsee gave me a check for $5.00. * * *

"The day I went to Booneville, Arkansas, to make depositions in this case Mr. Norvell came to me and told me that some of the men working for the Carter Oil Company would likely attempt to persuade me to testify for the Carter Oil Company and also said to me that if they offered me money for my testimony, just to let him know and he would double the amount that the Carter Oil Company or any of their lawyers or interest agents would pay me. * * *"

Affidavit of V. C. Henry (R. 137-138), who formerly lived at Blue Mountain, Arkansas, and moved from there to Elk City, Oklahoma, 11 years ago; states that he is 56 years of age and that he was a constable at Blue Mountain and summoned citizens for a coroner's jury, and affiant was also a member of the jury; that soon thereafter he moved to Elk City, Oklahoma.

"* * * Affiant further says that but a few days before the trial was set the said Earl Gamble invited this affiant to go to Fairfax, Oklahoma, and gave him $20.00 to cover his expenses for the trip.

"This affiant says that he went to Fairfax, Oklahoma, and there met the same party, who took him to a telephone booth and while affiant stood on the outside this party called up by long distance parties unknown to affiant at Tulsa, and after a brief conversation left the booth and the next day in a public highhighway they met a stranger.

"Affiant was then informed by these parties and the stranger that it was their desire that he, this affiant, write a letter to Norvell and Norvell stating that he had decided he did not care to attend the Muskogee trial and that this letter be mailed. Affiant further says that he was the next day given through Earl Gamble $500.00 in twenty-dollar bills with a band around the

center with instructions that upon reaching home that he mail such a letter.

"Affiant further says that he followed instruction and returned to Elk City with the money and wrote the letter to Norvell and Norvell. And affiant has never attended any trials nor been a witness with reference to the Raymond Jackson case."

Affidavit of Lee Gary (R. 139-140-141) states he is about 47 years old.

"* * * Affiant states that during the latter part of the year 1931 and part of January, 1932, he was employed by the Carter Oil Company of Tulsa, Oklahoma, and was held by said Carter Oil Company as a material witness in the case of Raymond Jackson vs. Carter Oil Company * * *. Affiant states that Carter Oil Company held him as a witness in said cause for about twenty or thirty days; that a man by the name of Harper, affiant is not sure of his initials but believes they were either C. L. or L. C. Harper, employed affiant and paid him for the Carter Oil Company.

"There was also a colored boy working for the Carter Oil Company assisting in getting up evidence, by the name of Joe Howard. That the said Harper was working in the capacity of *contack* or evidence man. At the time affiant was held as a witness for the Carter Oil Company, he was told that for some year or two before said period, that the Carter Oil Company was contending and trying to establish as a fact that the said Raymond Jackson was not killed on a freight train at or near Blue Mountain, Arkansas. That Norvell & Norvell of Wewoka, Oklahoma, who were attorneys for Davis A. Jackson and wife, father and mother of Raymond Jackson, were contending that the said Raymond Jackson was killed on a freight train on the morning of November 8, 1921, and Carter Oil Company wanted this affiant as a witness to testify as to the identity of the negro who was killed and that said negro was not Raymond Jackson. Affiant states that he and a negro by the name of DeLois started

from Paris, Texas, near the latter days of October or the first days of November and went to Oklahoma City. At Oklahoma City they boarded a Rock Island freight train going east towards Arkansas and headed toward Little Rock. Affiant states that somewhere along the line before they reached Boonevile, Arkansas, some other negro boys got on the same freight train but affiant did not know them. Affiant states that he was close to the said negro boy who claimed to be DeLois, at or near Blue Mountain, and saw the said negro boy fall between two of the freight cars and he was run over by the train and killed. The said negro boy or man was a little taller than affiant and would *weight* between 175 and 185 pounds and was about 5'10-¼" tall. Affiant at that time was about 5' 10-½" or 11" tall and weighed about 165 pounds and was between 25 and 27 years of age. The DeLois boy who was killed, looked to be about the same age at that time as affiant was. Affiant knows that the boy who was killed was not Raymond Jackson.

"Affiant was told by the said Harper and Joe Howard some time just before or during the trial had at Muskogee in January, 1932, that the Carter Oil Company made some kind of settlement with the Norvells and Jackson and that this affiant would not be needed as a witness. The said Harper then instructed Joe Howard to purchase and turn over to this affiant a Ford automobile, which he did purchase at . . ., Arkansas. * * *

"Affiant proceeded on another train and went to Little Rock after the said DeLois was killed. There were two or three other negro boys going on to Little Rock or in that direction but affiant did not get acquainted with them. There may be some other details which affiant does not now remember."

Affidavit of Sid Jones (R. 158) states he is 45 years old and was born and reared in Booneville, Arkansas; that he

was city marshal in November, 1921, when a negro man was killed on a Rock Island freight train.

"• • • I was later in court relative to this case at McAlester, Oklahoma. We talked about the case as the Raymond Jackson Negro case. W. L. Kincannon gave me a check on the Citizens Bank, Booneville, Arkansas, for $250.00. He represented the Carter Oil Company of Oklahoma • • • my hotel and other expenses were taken care of by some one • • • I did not pay these expenses."

Affidavit of Claud Lowder (R. 159) states he was reared near Booneville, Arkansas; is 43 years of age; that he recalls the death of the negro on the Rock Island Railroad and who was buried west of Blue Mountain, Arkansas. He was present when this unidentified negro was exhumed by Brock, Charlie McCormick and Amos Adams. • • • Many lawyers, doctors and interested persons were present when the negro was dug up. • • • The Carter Oil Company of Oklahoma was represented. • • • There were no identifying marks present except a pair of coarse work shoes and some buckles and buttons.

"• • • Later I found out that much money had been expended—that the grave had been guarded from night to night • • • that men were paid to go to court and men were paid to stay away • • • Artie Cotner was paid a handsome amount and was never called to the witness stand—Walter Robinson was paid $200.00 and never was called—Gus Mobley was paid $500.00 and was not even summoned to court, Charlie Walters was paid $100.00 in addition to his regular fee and after the case was closed and Walters was home • • • Carroll Schneider was paid a good sum—Luke Walls was paid about $400.00—Louis Harger paid something like $400.00 and money was spent freely around the hotels and obtaining testimony that was never used • • •."

Affidavit of Artie C. Cotner (R. 160) states he is 49 years of age and resides in vicinity of Booneville, Arkansas.

He was with Sid Jones, city marshal of Booneville, and Jack London, special agent for the Rock Island, on November 6, 1921, when the negro man was killed on a freight train.

> "* * * was later summoned to McAlester, Oklahoma, or advised by W. L. Kincannon to appear in the McAlester court. He represented the Carter Oil Co. of Oklahoma * * * W. L. Kincannon gave me a check for $260.00 which I cashed at the Citizens Bank for my attendance on the court * * *. My hotel bill and other expenses were cared for but I do not know who paid that."

Affidavit of Walter Robinson (R. 162-163) states he was born and reared near Booneville, Arkansas, and is 50 years of age; that he was summoned on behalf of the Carter Oil Company as a witness in the Raymond Jackson case tried at McAlester, Oklahoma. When he was first summoned he received a check for $50.00. Later, W. L. McKinnon of Booneville, one of the attorneys for the Carter Oil Company, gave witness a check for $200.00, besides all of his expenses were paid.

> "* * * When I was first summoned I received a check for $50.00 which was with the summons * * * I cashed this check at the Citizens Bank, Booneville, Arkansas * * * I was told at McAlester, Oklahoma, that our hotel bill would be settled * * * I received the most splendid attention at the hotel in McAlester but was never asked to pay any bill there.
>
> "Attorneys for the Carter Oil Company had me called from my room and we consulted. They asked me what I knew about the negro being killed at Blue Mountain, Arkansas. I told them they dismissed me from their room and I returned to Booneville, Arkansas. * * *"

Affidavit of Carroll Schnieder (R. 163-164) states 49 years of age, born and reared near Booneville, Arkansas. The night before the negro was killed on a freight train affiant was near Artie Cotner, Sid Jones and Jack London when they searched some negro boys; they (the boys) were

wearing overalls and jumpers and had on dirty underwear. Affiant, the next morning, saw the negro that was killed and he was about 24 years old, possibly older, and weighed about 200 pounds. He was buried by the section crew.

"* * * I was later summoned into court at McAlester, Okla.—I was given a $50.00 check by attorney W. L. Kincannon of Booneville, Arkansas, which I cashed at the Citizens Bank, Booneville, Ark. I later testified in the case and was paid $200.00 in a check by attorney W. L. Kincannon, of Booneville, Arkansas, which check I cashed at the Citizens Bank, Booneville, Arkansas * * * Carter Oil Co. of Oklahoma paid my hotel expenses for 4 days * * *. The other boys were paid in checks in similar amounts along with me * * * My transactions were all had with Attorney W. L. Kincannon and Attorney L. G. Owen."

Affidavit of Booker Jackson (R. 172-173-174) states he is a son of Davis A. Jackson, deceased, and Rhina Jackson and a full brother of Raymond Jackson who was allotted the 40 acres of land in controversy.

"* * * Affiant states that some two or three weeks ago he met Judge A. S. Norvell on the street in Wewoka and Judge Norvell asked affiant if he needed any money, and he replied, No, not now; that the said judge then stated to affiant that if he needed any at any time to come up to the office and he would let him have two, three or four hundred dollars. Affiant states his brother, Felix told him within the last few days that Judge Norvell had given him $100 to $150. * * *"

Affidavit of Norman Gains (R. 175-176) states he lives at Wewoka, Oklahoma.

"* * * Affiant further states that he talked with Davis A. Jackson about his son Raymond, that the said Davis A. Jackson stated that he did not believe that Raymond was dead, that he was still living. Affiant further states that the said Davis A. Jackson told him about the *Norvals* and others removing the bones of a negro who was killed on a freight train near

Blue Mountain, Arkansas, in the early part of November, 1921, to Seminole County and caused said bones to be buried in the private cemetery of the said Davis A. Jackson. * * *

"* * * *Affiant states that some time early in the year 1939 he heard a conversation between Davis A. Jackson and some of his old Mason friends wherein they were discussing the proposition that the *Norvals* and Davis A. Jackson had made * * * that he gathered from the conversation that the said Davis A. Jackson and the *Norvals* had agreed to pay this woman $14,000.000 to secure her consent for the removal of the bones of said negro man and the burial of same in the said Jackson's private cemetery, that they had paid $7,000.00 and still owed the balance of $7,000.00, that affiant does not know anything about this personally, but does remember the conversation had between the said Davis A. Jackson and his friends wherein they were discussing the proposition. * * *"

Affidavit of Booker Jackson (R. 224-225) states he is a younger brother of Raymond Jackson.

"* * * This affiant states that when Raymond returned about June 15, 1930, he readily recognized him as his brother, but was told by his father, Davis Jackson, not to admit or to recognize Raymond as his brother, under a threat of punishment, so as to enable his father to inherit the property of Raymond Jackson."

The excerpts and statements from the following affidavits relate more directly to the identity of the appellant, rather than to the alleged facts of paying witnesses to remain out of the jurisdiction of the court, and others for their testimony.

Affidavit of Mrs. Parlee Wells (R. 142-143-144) of Earlsboro, Oklahoma, states that she lived near Davis Jackson and his family for many years and frequently visited in the family; that she knew Raymond Jackson before his departure and knew him well; that he frequently visited

the home. She knew of his going away and the search for him after oil was found on his allotment.

"• • • That some time in the fall of 1929 or in the early part of 1930 she received a letter from her brother, Charley, in which he states, 'met Raymond Jackson yesterday and he and I visited together last night and went to a show. He is on his road to California.' Affiant knew that her brother did not know of the search for Raymond Jackson at the time he wrote this letter for he had been away for many years living in Phoenix, Arizona, traveling in various parts of the United States.

"Affiant says within a few days after receiving this letter she met Rev. Davis Jackson on the streets of Wewoka, Oklahoma, and greeted him as follows: 'Rev. Jackson, I have some good news for you. I have located Raymond' thereupon Rev. Jackson smiling said, 'I have located him also,' and pulling a letter from his pocket held it up and said, 'I have a letter from him,' placing the letter back in his pocket, whereupon affiant said, 'then of course my news is not news to you,' and this ended the conversation as far as Raymond Jackson was concerned.

"At a time when through my husband's efforts and Judge Dickerson's cooperation Raymond returned. He immediately came to our house and I saw at once he was Raymond Jackson. I had remembered a scar on his lip and his general features and I knew at once, and I know now that he is the same Raymond Jackson that I saw when visiting Davis Jackson's family, and I knew as well as I knew my own family that he is Raymond Jackson of the family of Davis and Rhina Jackson and we talked of many old things that transpired before he left Oklahoma."

Affidavit of S. W. Lane (R. 141) states he is a resident of Wewoka, Oklahoma; was formerly engaged in the grocery business and he was well acquainted with Davis and Rhina Jackson, in fact the whole family; that Davis A. Jackson in 1914 went to Africa and was gone for about

1½ years; that prior to Davis' leaving, Raymond Jackson would frequently come to the store with his father, and during the period his father was away Raymond would frequently come to the store with his mother and was in his store on an average of three times a week up until he left home in 1921.

"* * * Affiant further states that sometime during 1928, and his recollection was in the month of July, he received a letter from Raymond Jackson posted and mailed somewhere in Oregon, as he remembers it. The letter in substance was as follows: 'Dear Mr. Lane, I wish you would rent my forty-acre allotment and send me some money. *Twll* Uncle Cooty Johnson and my folks I will be back sometime in August and see them.' Affiant states that this was the substance of the letter. He further states that Davis Jackson, Raymond's father, was in the store a few days later and the affiant showed him the letter and let him read the letter from Raymond. After reading same he turned around picked up his groceries and walked out, making no comment about the letter.

"* * * Affiant states that the first time he saw Raymond Jackson after he returned to Oklahoma was about two years after he received the letter referred to above, and Raymond said something about having written him. Raymond had a scar on the left side of his upper lip before he left home and same scar was recognized by affiant on his return.

"* * * Affiant states that Judge J. T. Dickerson came to said affiant in 1930 or 1931 and inquired about the letter and in company with him was the same Raymond Jackosn who had traded in his store, the son of Davis A. and Rhina Jackson, that the said Raymond Jackson appeared to have no knowledge or information when he wrote said letter that any oil had been discovered on his forty acres of land."

Affidavit of J. T. Dickerson (R. 144) states that in 1930 and 1931 he lived at Earlesboro, Oklahoma, and that he

had a colored client by the name of Elias Wells who had consulted him on legal matters.

> "* * * Wells then exhibited a letter written to his wife, Mrs. Parlee Wells, by her brother, Charley Graham of Phoenix, Arizona. In this letter Charley Graham said:
>
> > 'I met Raymond Jackson yesterday and he and I spent the day and evening together. We had a good time going over our early life in Oklahoma.' * * *"

This affidavit is lengthy and we request the Court to read the full content.

Affidavit of William Wright (R. 146) taken in deposition form before County Judge Jas. P. Melone of Tulsa County. Wright is a half brother of Davis A. Jackson and an uncle of Raymond Jackson. It will take the Court but a few minutes to read this affidavit, and we trust it will do so, for a man's birthright is at stake.

Affidavit of Joanna Jackson (R. 108-109) states that she lives at 806 South Oklahoma Street, Shawnee, Oklahoma.

> "That my present name is Joanna Jackson, I am 30 years of age and live at 806 South Oklahoma Street, Shawnee, Oklahoma. My maiden name was Joanna Franklin. I was born and reared in Seminole County, Oklahoma, and was there when some people by name of Bradshaw and Foster Williams. When they came down there they had a boy with them they called Cush. They told me during the time they were there that this boy Cush was not their boy, that they brought him from over close to Wewoka. * * * He and I used to be sweethearts—just kids. * * *
>
> "I know of my own personal knowledge that the Raymond Jackson who is present at the taking of this affidavit is one and the same boy who stayed with George Hardman and came to that part of the country

with Foster Williams and was known at that time as Cush.

"* * * Judge Norvell asked me to come to Muskogee and testify that this was not the same boy that I knew as Raymond but I refused to do so, that I did not want to have anything to do with it. * * *"

Affidavit of Betty Martha Washington (R. 114-115) states she is 57 years old and is a step-sister to Davis Jackson.

"* * * The young man who is present at the taking of this affidavit is positively the true Raymond Jackson, the son of Davis Jackson and Rhina Jackson of Wewoka, Oklahoma, and is a brother to Aaron, Felix, Inman, Andrew and Booker Jackson, and enrolled as a Seminole Freedman opposite Roll No. 49."

Affidavit of Peggie Ellis (R. 115) states she is 36 years old and has known Davis Jackson practically all her life, and has known Rhina Jackson since 1909, and is well acquainted with Davis Jackson's family. Davis Jackson was affiant's guardian of her person and estate and she lived in the home of Davis Jackson and Rhina Jackson, together with all the other children from 1912 to 1917, and was intimately acquainted with the whole family.

"* * * I know of my own personal knowledge that this is the true Raymond Jackson, the son of Davis and *Thina* Jackson of Wewoka, Oklahoma, enrolled as a Seminole Freedman opposite Roll No. 49."

Affidavit of George Washington (R. 116) states he is 66 years of age and lives at Shawnee, Oklahoma.

"* * * I am the husband of Betty Martha Washington, nee Davis. Betty Martha Davis now Washington is a step-sister to Davis Jackson of *Wewoaka,* Oklahoma, the father of Raymond Jackson. * * *

"I am personally and intimately acquainted with all of Raymond Jackson's relatives and have talked with some of his relatives and none have denied to me the identity of this boy as being the true Raymond Jackson, and I know of my own personal knowledge

that he is the true Raymond Jackson, the son of Davis Jackson and Rhina Jackson of Wewoka, Oklahoma, enrolled as a Seminole Freedman New Born No. 49."

Affidavit of T. D. Dotson (R. 117) states that he is 72 years of age and lives at Konawa, Oklahoma; that he has lived in Seminole County since 1905 and served as a sheriff of that county from statehood until 1911; that he has known Davis Jackson and Rhina Jackson since statehood, including Raymond Jackson.

"* * * The young man present at the time of the taking of this affidavit in the office at 306 Federal Building, Tulsa, Oklahoma, is the true Raymond Jackson, the son of Davis Jackson and Rhina Jackson of Wewoka, Oklahoma, and a brother to Aaron, Inman, Andrew, Felix, and Booker Jackson."

Affidavit of J. E. Shepard (R. 117) states he is 66 years of age and lives at Shawnee, Oklahoma, has known Davis A. and Rhina Jackson, the father and mother of Raymond Jackson, for 36 years.

"* * * The young man who is present at the time of the taking of this affidavit in the office at 306 Federal Building is the true Raymond Jackson, the son of Davis Jackson and Rhina Jackson of Wewoka, Oklahoma, and a brother to Aaron, Inman, Andrew, Booker, and Felix Jackson."

Affidavit of Delia Williams (R. 118) states she is 51 years old, and resides at Hobart, Oklahoma; that she testified in Raymond's trial and he was referred to as Walter Williams, affiant's son.

"* * * I was well acquainted with him at that time and of my own personal knowledge now at this time I am able to verify under oath that the young man who is present at the taking of this affidavit is the true Raymond Jackson, the son of Davis Jackson and Rhina Jackson of Wewoka, Oklahoma, and a brother to Aaron, Inman, Felix, Andrew and Booker Jackson of Wewoka,

Oklahoma, and that he is *not* relation to me whatsoever."

Affidavit of Foster Williams (R. 119) states he is 55 years old and resides at Hobart, Oklahoma; he was at the trial at Muskogee and the boy who is the true Raymond Jackson was referred to as Walter Williams and not in truth and fact Raymond Jackson.

"* * * I knew the true Raymond Jackson, the son of Davis and Rhina Jackson of Wewoka, Oklahoma, prior to 1918. I was well acquainted with him at that time and of my own personal knowledge now at this time I am able to verify under oath that the young man who is present at the taking of this affidavit is the true Raymond Jackson, the son of Davis Jackson and Rhina Jackson of Wewoka, Oklahoma, and a brother to Aaron, Inman, Felix, Andrew, and Booker Jackson of Wewoka, Oklahoma, and that he is no relation to me whatsoever."

Affidavit of C. B. Blanton (R. 119-120) states that he is 33 years of age and lives 7 miles west of Wewoka, Oklahoma.

"* * * I have known the members of the Davis Jackson family all my life and went to school with Felix, Inman, Aaron, Roxie, Myrtle, Dollie, Nettie, C. C., and Raymond. We attended Blanton School, which is located right at the Davis Jackson farm. I knew Raymond Jackson intimately and in November, 1921, I left Wewoka to go to Okmulgee. When I arrived in Holdenville I met up with Raymond Jackson, Will Rainey, Seke Howard, and a boy by the name of Rock. Will Rainey was persuading these boys to go to his home in Arkansas and when I left them in Holdenville they were in the yards of the Rock Island Railroad planning to catch a freight train *fro* Arkansas. * * *"

Affidavit of G. M. Durfield (R. 121) states he is 76 years of age; that he lives at Konawa, Oklahoma; has lived there since 1903.

"* * * This boy told me when he first came to my place that his name was Raymond Jackson. They nicknamed him 'Cush' and 'Booie.' During the time he was at my place I saw him every day and became intimately acquainted with him. All my family knew him well and he stayed right in the house with us. Raymond told me while staying with me that his father was Davis Jackson and lived around Wewoka. He told me he was part Seminole Indian and that he had an allotment of land. Raymond took sick while at the home of George Hardman and was prety sick and I went to Wewoka and found his father, Davis Jackson, and told him about the boy and asked him to come to him and do something for him. I afterwards learned that his father came down there. This boy stayed around in my neighborhood until about 1920 or 1921. * * *"

Affidavit of George Hardman (R. 121) states that he is 60 years of age and lives at Konawa, Oklahoma, and has since 1903.

"* * * Raymond Jackson came to my place in the spring of 1918 from G. M. Durfield's home and stayed in my home until some time in the fall of 1921. While he was working for me he took sick with pneumonia and was bad sick. I asked Mr. G. M. Durfield to locate Raymond's father, Davis Jackson, at Wewoka and tell him of the boy's sickness and ask him to come to him. His father, Davis Jackson, came to my place while the boy was sick. He came and left the same day. He talked to him like any father would and the boy knew him and I was convinced it was his father. Raymond left there some time in 1921 and I got a telephone call from him out in Washington some time around 1925 or 1926 stating he had oil on his land around Wewoka and wanted me to go look at it and see if I couldn't get some money for him.

"I know of my own personal knowledge that the Raymond Jackson who is present at the taking of this affidavit at Tulsa, Oklahoma, is one and the same Raymond Jackson who stayed and worked with me and *who* I knew all the time as the son of Davis Jackson of Wewoka, Oklahoma. His father agreed with me to pay the boy's doctor bill for his sickness."

Affidavit of J. H. Humby (R. 122-123) states that he is 29 years of age, lives 3 miles south of Konawa, Oklahoma; has lived there all of his life; that affiant was living at Konawa in 1917 when some people came there in covered wagons by name of Bradshaw and Foster Williams; they had a little colored boy they called "Cush"; they told affiant the boy, Cush, was not their child and that they brought him from over close to Wewoka. The boy, Cush, told affiant he was staying there with George Hardman; that his name was Raymond Jackson and that his relatives lived near Wewoka, Oklahoma.

"* * * This boy Cush and I used to play together and I knew him as a good *fried* and was well acquainted with him. I know of my own personal knowledge that the Raymond Jackson who is present at the taking of this affidavit is one and the same Raymond Jackson who was staying down there with George Hardman and was going under the nick-name at that time as Cush. * * *"

Affidavit of Will Franklin (R. 123) states he is about 44 years of age and lives at 406 South Union, Shawnee, Oklahoma.

"* * * I was there in 1917 when a colored boy whom they called 'Cush' was staying there with George Hardman and George Durfield. I was well acquainted with this boy during that time as he stayed there and was there with Geo. Hardman when I left there. * * *"

Affidavit of W. A. Scott (R. 124-125) states that he resides at Wewoka, Oklahoma, having lived there since 1902; that he has been personally and well acquainted with

Davis Jackson and his family during all that time; that he testified for Davis Jackson against Raymond Jackson in the trial at Muskogee.

> "• • • At the time of my testifying in this case at Muskogee I testified from my best knowledge and belief and was at that time from the appearance of this boy that he was not the same boy that I had formerly known as Raymond Jackson, but at this time I am even more convinced beyond any doubt whatsoever that he is the true and lawful Raymond Jackson the son of Davis and Rhina Jackson of Wewoka, Oklahoma. • • •"

Affidavit of Dr. E. O. Roberts (R. 125-126) states that he is 51 years of age, resides at Magazine, Arkansas, and is a veterinary surgeon; has resided in Magazine for the last 24 years and was living there at the time the negro boy was killed on the Rock Island Railroad. He was employed by C. C. Leftwich to make a tin box in which to bury the negro boy.

> "• • • There was only a few fragments of cloth, some buttons which were of brass as if from overalls, an old shoe and bones. These buttons had no appearance of having been taken from a regular suit of clothes and I saw no buttons that had the appearance of having been taken from a suit of clothes. I was close and observed all the activities, had the buttons in my hands and made an examination of them. • • •"

Affidavit of J. S. Sloan (R. 126-127) states that he is 50 years of age, resides at Blue Mountain, Arkansas, is a farmer, and has lived around there for the past 10 years. He was present when they took the body of the negro boy out of the grave on the right-of-way.

> "• • • The buttons which were dug up from the grave were Carhartt overall buttons and were not the kind of buttons of any kind that looked to be buttons off suits of clothes and am sure there were no such taken from that grave. The overall buttons were the only kind that were dug up there. I noticed particu-

larly about everything that was taken from that grave. * * *"

Affidavit of B. C. Ladd (R. 127-128) states he has been a resident of Logan County, Arkansas, for 55 years, his post office is Magazine, Arkansas, and that on or about the 7th or 8th of November, 1921, a colored man was killed near Magazine station on the Rock Island Railroad.

"* * * Affiant avers that Raymond Jackson danced for him the night previous to the killing, and the affiant further gave him food to eat. That the boy danced for him had a gold tooth, and since that time has visited him."

Affidavit of George Washington (R. 128-129) states he resides at Shawnee, Oklahoma, for the past 26 years.

"* * * This affiant states that he has known Raymond Jackson a Seminole Freedman opposite roll number 49 for the past twenty years, that he knows him to be the son of *David* A. Jackson and Rhina Jackson, who lived in Seminole County, Wewoka, Oklahoma. * * * That this Raymond Jackson referred to in the trial of a case had before Judge Williams as the California Raymond Jackson, is indeed and in truth the son of David A. Jackson and Rhina Jackson, who was *alloted* the north West Quarter of the NE4 of Section 11, Twn. 7, Rge. 6E, containing 40 acres of land. * * *"

Affidavit of Bettie Washington (R. 129) states she resides in Pottawatomie County, Oklahoma.

"* * * Affiant further states that she has known Raymond Jackson a new born Seminole Freedman, opposite Roll Number 39, from the day of his birth, down to the present time. That he is the son of Davis A. and Rhina Jackson of Wewoka, Seminole County, Oklahoma.

"Affiant states further that she is a step-sister of David A. Jackson, David A. Jackson's father having

married her mother, and that the relationship has been continued from childhood up to womanhood, as brother and sister, and that she is well acquainted with all his children."

Affidavit of Claude K. Lowder (R. 130) states he resides at Paris, Logan County, Arkansas, and that he is 42 years of age.

"* * * That in the spring of 1929 he was present at the exhumation near Blue Mountain, Arkansas, of the body of a man supposedly to be Raymond Jackson of Seminole, Oklahoma. That at the exhumation nothing was removed from the grave but the bones of a human skeleton and it was impossible to identify whether it be a white or colored person, or whether the skeleton be that of a man or woman. * * *"

Affidavit of Ruth Battle (R. 131) states she was reared practically in the home of Davis and Rhina Jackson with Raymond Jackson.

"* * * This affiant states further that she has known Raymond Jackson, referred to in this *affadavit*, all of her life, she being two years his senior.

"Affiant states that she is not interested in any lawsuit pending in any court, and is not related to any of the parties, by blood or marriage."

Affidavit of B. C. Ladd (R. 132-133) taken a year later than the former affidavit, states:

"* * * The next morning as my boy started to school he called to me on his way and said one of those negroes had been killed last night by the train. Later in the day I saw the body of one of these boys in the depot in Blue Mountain dressed in blue overalls. I did not see this boy Raymond again until December, 1936, and after talking with him about the facts I have referred to I am certain he is the boy that was on my place and who danced and got food from me as I have stated."

Affidavit of E. W. Whitney (R. 161) states he is 55 years of age and a resident of Wewoka, Oklahoma, and was formerly attorney for Davis Jackson as guardian of his minor children, including Raymond Jackson, and acted in this capacity until Raymond was of age. Some time after Raymond returned to Oklahoma he went into Whitney's office and Whitney testifies he recognized him immediately.

Affidavit of Cecil Cudjo (R. 164-165) states he is 29 years old and a son of Sarah Jackson Cudjo, and a grandson of Davis A. Jackson and Fannie Jackson (evidently a former wife of Davis A. Jackson). Affiant was born and reared in the City of Wewoka, Oklahoma, and was well acquainted with Raymond Jackson, went to school with him at the Blanton schoolhouse. One of the teachers at this school was Frances Trent, who boarded at the Jackson home.

> "• • • That he knows personally that Raymond the one who owns the allotment in Seminole County as a new born freedman was reared in Davis A. and Rhina Jackson's family as their son, Raymond Jackson, and the same Raymond Jackson he talked to yesterday and the 2 or 3 times before that; That Raymond and Booker and also Arron Jackson favor each other and anyone can clearly see the resemblance. • • •"

Affidavit of Frank Sloan (R. 166) states he has lived in the neighborhood of Wewoka, Oklahoma, for 38 years, part of the time near the home of Davis and Rhina Jackson. Affiant was road overseer part of the time and was well acquainted with Raymond Jackson.

> "• • • Within the last 30 days the Raymond Jackson that was known at that trial as the 'California Raymond' came to my farm and I had a long conversation with him. He told me about the horse trade and went into details to such an extent as could not be done by anyone just hearing about the trade. I examined him carefully and I am thoroughly convinced and know that he is the original Raymond Jackson, the son of

Davis and Rhina Jackson, that I knew and sold the horse to in 1920. * * *"

Affidavit of Sarah Finley Jackson (R. 167) states she has lived in and around Wewoka, Oklahoma, since the year 1912; that she lived near the Jackson family and is well acquainted with the whole family including Raymond; that she is now the wife of Felix Jackson and has been for nearly 7 years.

Affidavit of Fest Williams (R. 168) states he is 32 years old; that he has resided nearly all his life in Seminole County near Wewoka, Oklahoma; that when he was about 15 years old his father and family lived on a farm adjoining Davis Jackson's farm and that he was intimately acquainted with Raymond Jackson until 1921, when he left home. He went to school with Raymond and the other Jackson children.

Affidavit of Jackson Simon (R. 169-170) states that he has resided in Seminole County for 50 years and has acted from time to time as peace officer in the enforcement of the law in said county, and that he has been intimately acquainted with Davis and Rhina Jackson and family for 35 years and knows all the Jackson children enumerated in this affidavit.

"* * * Affiant states that he has seen Raymond since then, and he is present now at the taking of this affidavit, that he recognized Raymond as the true Raymond Jackson when he first saw him since his return home. That he *cecognized* him on account of his favor of his mother and some of the boys and then of his memory of him before he left and also by the scar on his upper left lip. * * *"

"* * * That Jackson had about three sets of children born to different wives, or reputed wives, and Raymond is the son of Rhina Jackson who was living with the said Davis A. Jackson at the time of the death of the said Davis A. Jackson. There is a striking resemblance of Raymond Jackson and Rhina Jackson especially around the nose and mouth."

Affidavit of A. G. W. Sango (R. 171-172) states he is 71 years old, is an attorney at law, and is a cousin of Rhina Jackson, the wife of Davis A. Jackson.

> "• • • Affiant says that the said Raymond Jackson is an erratic, incompetent and absolutely irresponsible as far as business is concerned, but as far as his memory is concerned of events it is exceedingly keen and in most cases accurate.
>
> "Affiant says further that the said Raymond Jackson has spells in which he seems to be absolutely unaware of what he says and what he does and there are days during these spells that he complains of severe headaches and is not capable of either remembering what he has promised to do or capable of transacting any kind of business during these mental depressions. • • •"

Affidavit of Rhina Jackson, mother of Raymond Jackson (R. 219-220): This affidavit was made in 1943 and states that she gave birth to a boy child, a new born freedman, who was allotted opposite Roll No. 49.

> "• • • That the body of some unknown or unidentified person was dug up and brought to Wewoka for burial, at which time it was represented to this affiant that it was the body of her son, Raymond Jackson. That she was told to say it was Raymond Jackson, by her late husband, David Jackson for the purpose of establishing the death of Raymond Jackson, her son, so as to enable this affiant and David Jackson to inherit the *allottment* as well as royalties from the said *allottment* of Raymond Jackson. That when she hesitated and expressed a desire and a doubt, and did not want to identify the body as that of Raymond Jackson her husband, Davis Jackson threatened her with force and *violance* if she did not agree to accept the said body and identify it as the body of her son, Raymond Jackson, and in order to keep the peace in the family and to avoid physical violence from her husband, David Jackson, she agreed to accept *of* the body and to permit it to be buried but at no time did

she actually believe the said body was that of her son, Raymond Jackson. * * *"

"Affiant further states that at the trial of the lawsuit pertaining to the property in the United States District Court at Muskogee, Oklahoma, upon the *advise* of Attorneys Norvell and Norvell, and the commands and directions of David Jackson, her husband, against her will she was compelled to testify in open court that Raymond Jackson was not her son, although she knew the said testimony was false. * * *"

Affidavit of Aaron Jackson (R. 221-222) states that he is a son of Davis and Rhina Jackson, is about 48 years of age, and that he is a minister of the gospel.

"* * * Affiant further states that when Raymond returned, he readily recognized him as his brother that he had so often played with, nursed and helped his mother and father to raise during his infancy, and lived together until November of 1921.

"This affiant states that prior to the return of his brother, David Jackson, his father, had told him, as well as Rhina Jackson, the mother of this affiant, to say that Raymond Jackson was dead and to claim a certain body that was shipped to Wewoka for burial, was the body of Raymond Jackson, so as to enable the said David Jackson and Rhina Jackson to inherit the properties and royalties from oil pumped from the land of Raymond Jackson.

"This affiant further states that when his mother Rhina Jackson, hesitated and did not want to accept *of* the body that was shipped in for burial, David Jackson told her that she had to do so, and threatened her with punishment if she did not accept *of* the said body, as aforesaid, and also threatened her, as well as the other *member* of the family by telling them he would shoot them if they would own, acknowledge or admit that Raymond Jackson was their brother and was still alive, and, especially, if they should come into court and admit that Raymond Jackson was the true and lawful owner and the *allotte* of the property known

as the Northwest Quarter of the Northeast Quarter, Section Eleven, Township Seven North, Range Six East, in Seminole County, Oklahoma. * * *"

"Affiant states that he knows of his own knowledge that Raymond Jackson is his brother, and one and the same as the baby boy who was born to his mother and reared in the home with him."

Affidavit of Roxie Jackson Gallimore (R. 222-223) states she is a daughter of the late Davis A. and Rhina Jackson and a sister of Aaron Jackson, Inman Jackson, Myrtle Jackson Hill, Dollie Jackson Burns, Booker Jackson, and Raymond Jackson.

"* * * Affiant states that prior to Raymond's return, her father proceeded to have the courts find that Raymond was dead, so as to enable him to inherit Raymond's property and the royalties from his land.

"This affiant states that when Raymond returned to his home in June, 1930, her father told this affiant, as well as all the rest of the children, that they were not to recognize Raymond, and to pretend that he was not their brother, so as to enable him to go through with the lawsuit that was then pending, and to enable him to recover the monies and lands. That upon a threat of punishment, they obeyed their father and refused to recognize Raymond as their brother.

"This affiant further states that she was present and knows of her own knowledge that her father threatened her mother with great punishment if she should recognize Raymond as her son, and thereby prevent him from collecting the money due and owing from the royalties on the property."

Affidavit of Myrtle Hill (R. 223-224) states that she is the daughter of the late Davis and Rhina Jackson.

"* * * That from the time she can first remember, up to the present time, Raymond Jackson was living in the home, recognized and treated by all members of

the family as the child of David Jackson and Rhina Jackson, and the brother of this affiant, as well as the other children. • • •

"This affiant states that her father, David Jackson, under a threat of severe punishment, *forbid* her to recognize Raymond as being her brother and the child of David and Rhina Jackson, so as to enable him to inherit the properties belonging to Raymond Jackson, on the pretext that he was dead, when in truth and in fact, he well knew the said Raymond Jackson was not dead, but was attempting to secure the said property for himself."

Affidavit of Sydney Harris (R.225) states:

"That he lived in the State of Oklahoma, living in Wewoka in 1916 to 1919, respectively. He left there, and coming to the City of Ft. Worth, and residing in this city thereafter.

"Affiant states that he met Davis and Ryna Jackson recognized and called Raymond Jackson, while he was employed by him, as their son, and on one occasion, he had a gold tooth put in the mouth of Raymond Jackson, on Christmas day 1918. The next time he had an occasion to see Raymond Jackson, was in the City of Fort Worth, on the 16 day of February, 1942, and recognized the said Raymond Jackson as one and the same person who was the son of Davis and Ryna Jackson of Wewoka, Okla., and the same person whom he had a gold tooth put in his mouth."

The defendant Carter Oil Company filed its amended motion (R. 209-210) for summary judgment, based upon the pleadings on file in this action, including the exhibits.

Order and decree of the court sustaining said motion (R. 211-212) dismissing plaintiff's amended complaint. The plaintiff filed motion to vacate and set aside summary judgment (R. 214). This motion was in the nature of a bill of review, based upon newly discovered evidence attached to

said motion or bill of review, marked Exhibits A, B, C, D, E, F, and A-1 and B-2 (R. 215, 227). Whether this motion or bill of review be characterized as a motion or a bill of review, it has all the elements of a bill of review or a bill in the nature of a bill of review. It is based upon fraud evidenced by the affidavits attached as exhibits (R. 214-218, inc.). Affidavits attached as exhibits (R. 219-227, inc.).

The defendants thereupon filed their motion to dismiss the motion or petition to vacate and set aside the summary judgment (R. 229). On consideration of said motion of the defendants to dismiss (R. 239), it is recited, "plaintiff thereupon offered evidence in support of his motion to vacate and set aside summary judgment, at the conclusion of which the court did find that said motion should be in all respects overruled and denied." Then follows the decredal part of the order vacating said motion.

Propositions Involved for Consideration in This Court

I

The procedure in the nature of a bill of review, under the federal practice, disclosed from recent opinions of the Supreme Court, is rather informal and flexible, liberal, free of technical rules. There are no strict, hard and fast or fixed rules of procedure or of limitation.

II

The petition in the nature of a bill of review (R. 1-10), and the bill of review, labeled a motion (R. 214-218), were sufficient to invoke the jurisdiction of the District Court. *(Hazel-Atlas Glass Co., petitioner,* v. *Hartford-Empire Co.,* 322 U. S. 238, 88 L. ed. 1250); *(National Brake and Electric Co., petitioner,* v. *Neils A. Christensen, et al.,* 254 U. S. 425-433, 65 L. ed. 341).

III

Upon the pleadings and exhibits thereto, a substantial question of fact was in issue and the District Court was

without authority or jurisdiction to render a summary judgment.

IV

The motion and amended motion for a summary judgment must, of necessity, admit substantially all facts pleaded on behalf of appellant, and likewise on behalf of the defendants, including all exhibits.

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In the
Supreme Court of the United States

October Term, 1946

No. 747

RAYMOND JACKSON, AN INCOMPETENT PERSON BY PHIL OLDHAM, NEXT FRIEND AND GUARDIAN *AD LITEM, Petitioner,*

vs.

THE CARTER OIL COMPANY, A CORPORATION; RHINA JACKSON, RUBY NORVELL, ALBERT NORVELL, AND CAROLYN NORVELL CLARK, *Respondents.*

REPLY BRIEF

We are filing a Brief Reply.

It is of no importance whether the Petitioner's Estates, in this hearing, is of $300.00 value or $3,000,000.

It is of little importance whether the Petitioner owned or may ever own his allotment, except as hereafter stated.

It is of the utmost importance of the manner and by what means the Petitioner lost his claim of title and in what manner and by what means, Respondents temporarily, became vested with his title.

It is of supreme importance to this Court, the Judiciary in general, the institutions set up to protect and safeguard the public, if fraud intervened obstructing and paralyzing the judicial process,—the agencies of public justice resulting in the loss of Petitioner's title.

Respondents, in effect, enter a plea of confession and avoidance; they nowhere in the record, in their brief, acts and conduct specifically deny the affidavits and fraud disclosed therein, which are attached as exhibits to Respondents' answer (R. 110-168) and the affidavits of Petitioner's mother, brothers, and sisters, exhibits A to E inclusive (R. 219-225) all of which are included in the appendix attached to the Petition; therefore, this lack of denial is in effect a confession, at least a tacit confession.

Respondents, for their plea of avoidance, in effect set up a counter-claim in an attempt to allege that the Petitioner himself is not free of sin; hence, Respondents assume to believe that by a counter plea of the misgivings and wrongs of the Petitioner, as they allege, their own wrongs and frauds are remitted and fully forgiven.

We hold no brief for any wrongs or fraud, if such have been committed by Petitioner. We believe we can safely say, however grievous the Petitioner's faults may be, he has never committed nor attempted to commit any fraud upon any of the courts wherein his litigation has been pending and prosecuted. We may further suggest about all of the complaints we have heard against Petitioner, in relation to this litigation, have come from the Respondents. This might not be unexpected, since Petitioner is seeking to recover his allotment and oil taken therefrom and Respondents are doing all in their power by unfair means to defeat Petitioner in his rights. It would seem in reason that the Respondents, in the circumstances, should be the last persons to complain in behalf of third parties.

In their first paragraph, Respondents charge that Petitioner had held himself out as "Willie Harjo", as an heir to the estate of Exchillo Harjo. This incident is fully explained in the record (R. 55), which disclose that the idea, its purpose, and the whole matter originated in the fertile mind of Petitioner's father, Davis A. Jackson, and his lawyers, Norvell & Norvell, as a part of the fraudulent conspiracy, which conspiracy was to defraud Petitioner out of his allotment, (was later joined by the Carter Oil Company), about the time oil was discovered on Petitioner's 40 acres, to induce him to remain on the west coast and to prevent him from coming to Seminole County, Oklahoma, where his land and oil wells were situate and successfully prevent him from defending his rights.

THE RACKET

Respondents have much to say about a "racket" because Petitioner has seen fit to litigate in an effort to recover his birthright. They say the Trial Court and the Circuit Court of Appeals did what they could to put an end to Petitioner's racket. It is true that the Trial Court did on May 4th, 1944, (R. 211-212) "perpetually enjoin Petitioner from filing further suits or *prosecuting further litigation against the Defendants*". It would appear from counsel's brief, P. 2, that the trial judge of his own motion, without any suggestion from counsel, included the injunctive order in the decree. This is difficult to believe because the Petitioner had never had a full trial in any trial court. The trial in January, 1932, judgment April 18, 1932, went off on a Motion to Dismiss, and his rights had never been considered or adjudicated by any Appellate Court in any proceeding and upon any appeal wherein the Petitioner was a party to the appeal in any wise. *Strictly construed,* the Petitioner might be *held guilty of violating this injunction by prosecuting his appeal and in filing his Petition in this Court for review.*

There is another reason why it is difficult to believe that the trial judge initiated this injunction without some powerful, persuasive, and irresistible argument; because Judge Broaddus is a good lawyer and a fine and reasonable judge and we can not believe he would have perpetually enjoined Petitioner had he been advised that Petitioner had never had a full trial on account of the conspiracy and the fraud practiced upon the Court and had he been advised further that no appellate court at that time had ever considered and adjudicated Petitioner's rights, except in an appeal to which the Petitioner was not a party and no one was authorized to represent him. (See opinion—(Ky.) *Jackson* v. *Jackson*, 67 Fed. (2d) 719)

MORE ABOUT RESPONDENTS' ALLEGED RACKET

If any bigger, more destructive, and more dangerous "Racket" could be conceived, formed, and executed, than is disclosed in the record, in the fraud practiced upon Petitioner and to effectuate same, also practiced upon the court, as disclosed from the record, with a more sinister purpose, we should like to behold it.

This Honorable Court will not fail to consider the status, the environment, and the background of Petitioner as compared with the Respondents in respect to Respondents' alleged rackets. The Petitioner is what the appellation to his name implies: a New Born Freedman. His parents were either in slavery or descendants of slaves. The Petitioner, an untutored and incompetent, irresponsible, Negro boy Freedman; in some respects smart above the average on some subjects, but wholly irresponsible and unreliable in business and in the handling and value of money. There is one thing he does know, beyond the shadow of a doubt, and that is that he is Raymond Jackson, the allottee of the land in controversy. This is established in numerous ways in the Record.

He also knows beyond all question of doubt that the Carter Oil Company, in connection with the other Respondents, defrauded him out of his birthright up to date and that said company has extracted and taken from his land estimated values in oil in excess of three million dollars. He knows, too, that under the advice and direction of his father's attorneys, Norvell and Norvell, both his father and mother disowned and repudiated him under violent threats and coercion on the part of his father. His father, mother, brothers, and sisters appeared in court and knowingly testified falsely that he was unknown to them and that "their Raymond" had been killed on a train at Blue Mountain. He knew all the time his relation in the family group, the same as every other boy or girl knows his or her relation in their respective family. He knows too, now, since his mother, brothers, and sisters have been freed from a terrible frightening fear and restraint and having made affidavits that they had been induced to swear falsely under fear and threats that they, too, knew all the while that Petitioner was in reality Raymond Jackson and the allottee of the land involved; that each of them knew all the time that their testimony was absolutely false. (R. 219-225)

May we inquire of this Honorable Court if there can be any more despicable and corrupt crime as disclosed from the affidavits marked Exhibits A to E inclusive (R. 219-227) and as disclosed from some of the other 51 affidavits in the appendix? And yet, in the face of this amazing record, the Respondents pretend to believe and argue that this Court should not accept jurisdiction; that the facts are not sufficient to challenge the exercise of discretion and action of this High Court under its power and duty of supervision. Respondents seem to think they should be excused and their wrongs blotted out and forgotten under their plea of avoidance, on account of the wrongs and misgivings of the Petitioner.

Such wrongs of the Petitioner, alleged by Respondents, sink into oblivion; they are no more than mole hills compared with the wrongs and frauds charged to Respondents, as disclosed in the Record.

OUR REASONS FOR REVIEW ARE SOUND

We believe Counsel are in error. We understand and appreciate full well that a Review on Writ of Certiorari is not a matter of right but is of sound judicial discretion and we claim that there are at least two grounds and reasons raised and asserted in the record, which are sound and warrant the issuance of the writ: (a) "Or has decided an important question of general law in a way probably untenable or in conflict with the weight of authority"; (b) "Or has so far departed from the accepted and usual course of judicial proceedings or so far sanctioned such a departure by a lower court as to call for an exercise of the Supreme Court's power of supervision". Under the undisputed facts, these two grounds need no argument; they are little less than self-evident.

Respondents seem to be impressed that it is of little importance and that it should be considered lightly by this Court that the worst kind of fraud is practiced upon a trial court by virtue of which a litigant is swindled out of his property through the processes of the law. They seem to think that bribing witnesses to leave the jurisdiction of the court or to remain out of the jurisdiction of the Court and from the trial is a matter in which the litigants, the courts, or the public have little concern. They also assume to believe that the intrinsic fraud disclosed from the affidavits attached as exhibits to Respondent's Answer and the conspiracy entered into which resulted in a flagrant miscarriage of justice, are matters of little concern to this court under its supervisory jurisdiction.

This Honorable Court has direct supervisory jurisdiction and control over all inferior Federal Courts. We cannot imagine the Court consenting to matters as serious as practicing fraud through and by virtue of a fraudulent conspiracy so lightly as to permit such to pass without notice and without action.

May we remind this Court that none of the affidavits of Petitioner's mother, brothers, and sisters have ever been before or considered by any Court except the District Court at the time the motion or petition in the nature of a bill of review to vacate the judgment, was considered and denied. These affidavits were attached as exhibits to the motion or Petition and they constituted all the testimony before the Court when the motion was denied. More than that, the 51 affidavits and the facts they disclose have never been before or considered by any court on the merits, in any case wherein the petitioner was a rightful party. They were attached to the Complaint in the action dismissed by Judge Kennamer (R. 171-185). The judge, in his opinion of dismissal, made this statement:

> "It is most extraordinary when a mother denies her child. Plaintiff brings no statement from Rhina Jackson that she ever admitted he was her son. She has been available at all times and steadfastly has maintained there is no kinship between her and Plaintiff."

This was before her husband and his lawyers died; before they were freed from fear.

We reiterate that the contents of these affidavits were successfully concealed from the Plaintiff and from the Court pursuant to said conspiracy through fear and threats until after Davis A. Jackson died in 1939 and until after his lawyers, the Norvell brothers, died in 1942 and 1943. They were then withheld by an attorney fraudulently until after the term of Court. (R. 216-217) Intimidation and threats of

prosecution for perjury were made against these affiants, as we are advised, until after the death of Jackson's attorneys.

The writer of the Petition and of this Brief had no part in the trial of this case or in preparing the record for appeal. The record had been filed and printed in the Appellate Court before present counsel was employed to brief the case and he had ten days only to prepare the brief for the Court of Appeals. The record is not as complete and as accurate as we should like.

If, for any reason, this Honorable Court should feel that it is unable to grant full relief under the record then, if not inappropriate, we trust the Court may accept jurisdiction to the extent of modifying the Order and Judgment of the trial court in eliminating the perpetual injunction against Petitioner. It would appear to be more in harmony with equity and justice had the trial court enjoined Respondents from further prosecuting its defense, seeking affirmative relief from a Court of Equity, based upon a fraudulent conspiracy. The Court should not, we believe, tie the hands of this incompetent colored Freedman, after his allotment has been taken from him in the manner disclosed in the record and then perpetually enjoin him from appealing to the courts to test the validity of the judicial process of the law, by means of which his property was taken, especially in view of the record and until he has had a full and fair trial. No more aggravated and despicable conspiracy and fraud were ever formed and executed upon a litigant and upon the Court having jurisdiction, to our knowledge, in this State.

In the case of *Hazel-Atlas Glass Co., Petitioner* v. *Hartford-Empire Co.*, 322 U. S. 238-271, this Court said:

> "* * * Surely it cannot be that preservation of the integrity of the judicial process must always wait upon

the diligence of litigants. The public welfare demands that the *agencies of public justice be not so impotent that they must always be mute and helpless victims of deception and fraud.* * * *"*

We have reason to believe that nothing except utter lack of power will cause this Honorable Court to withhold its consent to grant the writ prayed for.

Most respectfully submitted,

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FILE COPY

In the

RAYMOND [illegible]
BY PUBL[illegible]
GUARDIAN AD LITEM,
Petitioners,
vs.
THE CARTER OIL COMPANY, A CORPORATION,
JACKSON, BURT MISKELL, ALBERT MISKELL
AND CAROLYN MISKELL GARNER,
Respondents.

ANSWER BRIEF OF RESPONDENTS TO PETITION FOR WRIT OF CERTIORARI.

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INDEX.

AUTHORITIES CITED.

IN THE SUPREME COURT OF THE UNITED STATES.

October Term, 1946.

No. 747

RAYMOND JACKSON, AN INCOMPETENT PERSON, BY PHIL OLDHAM, NEXT FRIEND AND GUARDIAN *AD LITEM*,

Petitioner,

vs.

THE CARTER OIL COMPANY, A CORPORATION, RHINA JACKSON, RUBY NORVELL, ALBERT NORVELL, AND CAROLYN NORVELL CLARKE,

Respondents.

ANSWER BRIEF OF RESPONDENTS TO PETITION FOR WRIT OF *CERTIORARI*.

Since the first decree was entered on April 18, 1932, (R. 38-45) wherein petitioner was held to be an imposter, there has been a never-ending series of motions to vacate and bills of review filed on his behalf. A constantly changing parade of attorneys who appeared representing petitioner in this litigation. So apparent did it become that this individual, who, by his own admission, (R. 55) had theretofore, under the name of "Willie Harjo," held himself out as an heir at law of Exchillo Harjo and Ellen Harjo, two Indians who had died leaving large estates in Seminole County, State of Oklahoma, but who now holds himself out as "Raymond Jackson," was making a racket out

of his impersonations, which racket could be continued effectively only so long as litigation was actually pending in the courts, that the United States District Court for the Eastern District of Oklahoma found it necessary to take steps to prevent him from further victimizing the lawyers and laymen of Oklahoma and other states. To accomplish this, and at the instance of the Honorable Bower Broaddus, United States District Judge, there was included in the order and decree of May 4, 1944, the following:

> "* * * that the plaintiff herein, the so-called 'California Raymond Jackson,' be and he is hereby restrained and personally enjoined from filing further suits or prosecuting further litigation against the defendants, or their successors in interest, based on the claim that he is Raymond Jackson, the allottee of the land involved in this case." (R. 212)

In the preface of his petition for writ of certiorari the petitioner states that this litigation would never have existed were it not for the fact that the land involved is extremely valuable. This undoubtedly is true, for had it been otherwise, petitioner no doubt would still be litigating his claim as "Willie Harjo" under an entirely different alleged family relationship.

Section 3 of Supreme Court Rule 27 provides that appellees need not include in their brief a statement of the case beyond such as may be deemed necessary to correct inaccuracies or omissions in the statement of the other side. The statement of the case contained in the petition for writ of certiorari and brief in support thereof is not clear to respondents, and if confusing to ones who have been actually participating in this litigation for the past sixteen years, it seems quite likely that said statement may be anything but clear to ones otherwise unfamiliar with the case. For this reason, there is included herein the following statement of the case:

Statement of Case.

The litigation, in so far as it involves the "California Raymond Jackson," the petitioner herein, was commenced by the filing of suit in the United States District Court for the Eastern District of Oklahoma on February 7, 1931. The petition filed in said case was in the name of Raymond Jackson, as plaintiff, against The Carter Oil Company, as defendant, and was docketed under No. 4246 Equity. (R. 36-37) Messrs. J. T. Dickerson and Kenneth B. Kienzle were shown thereon as attorneys for plaintiff. In said petition plaintiff alleged that he was a Seminole freedman and was the allottee of the land here involved. The relief therein sought was possession of the land and an accounting for oil and gas produced therefrom. After answer was filed, by agreement of parties said case No. 4246 was consolidated with Equity No. 3948. (R. 38) The consolidated case came on for hearing in January, 1932, on the issues as between the plaintiff therein and other parties claiming adversely to plaintiff, including the respondents herein, or their predecessors in interest. Attorneys of record for petitioner at the time of said hearing were Messers. Blakeney, Ambrister & Wallace of Oklahoma City, Oklahoma; Wallace & Wallace of Sapulpa, Oklahoma; and Kenneth B. Kienzle of Shawnee, Oklahoma. The trial continued for four days before Judge Robert L. Williams at Muskogee, Oklahoma, following which the decree of April 18, 1932, was entered. (R. 38-45) Said decree included findings of fact of the court, among which were the following:

"1. • • • that said Raymond Jackson who was the allottee of said land was killed and died at Blue Mountain, Arkansas, on or about November 8, 1921."

"5. That the alleged Raymond Jackson, plaintiff, in Equity No. 4246, known in these proceedings as the California Raymond is not the son of Davis and Rhina Jackson and is not the allottee of the land involved herein."

It was adjudged in such decree, among other things:

> "That the petition of the California Raymond Jackson, plaintiff in Equity No. 4246 * * * be and the same hereby is dismissed with prejudice,"

and by such decree title of Davis A. and Rhina Jackson, A. S. Norvell and Spencer Norvell, and The Carter Oil Company was quieted against the claim of the "California Raymond Jackson," and he was forever enjoined from thereafter asserting claim to or interest in the land.

Pleadings (R. 13-14) disclose that the "California Raymond Jackson" prayed an appeal to the Circuit Court of Appeals for the Tenth Circuit, which was allowed; however, said appeal was not perfected, although eight enlargements of time within which to do so were asked for and granted. As shown by the decree entered in the consolidated case on April 18, 1932, there were several other parties to the consolidated action who claimed to be the real Raymond Jackson—all of whom the court found to be imposters. One of the claimants known in the proceeding as the "Kentucky Raymond Jackson" perfected an appeal to the Tenth Circuit Court of Appeals, and in passing thereon the Circuit Court reviewed the record and testimony introduced in the consolidated case. Included in the transcript of testimony filed in connection with said appeal was the testimony, or most of the testimony, which had been introduced by the "California Raymond Jackson." On November 28, 1932, the Circuit Court handed down an opinion in said case which is reported as *Jackson* v. *Jackson, et al.*, 67 F. (2d) 719. Therein said appellate court abstracted the evidence and in connection therewith the following is quoted from the opinion at page 720:

> "There can be no doubt that a young man about the age of the allottee was killed accidentally on November 8, 1921, about three weeks after the allottee left his home in Oklahoma. The body was found on the railway track severed at the waist line. The deceased at the time of his death wore overalls and a jumper

with a dress suit underneath. The label on the coat of the dress suit bore the words, 'R. Jackson, Progress Tailoring Company, Chicago,' also serial number 446,965. The label was removed and preserved by the coroner; it was delivered to his successor and was introduced in evidence. A cotton gin ticket issued to R. Jackson, Shawnee, Okl., was found in the pocket of the deceased. It was not preserved but many witnesses testified positively to its existence. It appears from several witnesses and without contradiction that the allottee purchased a suit from Progress Tailoring Company some time before he left home. There is some conflict with respect to the exact time, but it cannot be doubted that he purchased a suit from that company and that he was wearing it under overalls and a jumper when he left home. There is testimony indicating that the suit made by Progress Tailoring Company and bearing serial number 446,965 could not have been made until about 1923, but we regard that discrepancy as relatively unimportant, at least not controlling, when arrayed against the certainty that the allottee purchased a suit and was wearing it when he departed from home and that the coat found on the body of the deceased in Arkansas about three weeks later was made by the company and bore the name R. Jackson."

And the following is quoted from the opinion at page 721:

"We have examined the record with great care and we think the findings are not only supported by substantial evidence, but we concur in the conclusion that appellant is an impostor; that the allottee was killed at Blue Mountain, Ark., and that upon his death, title to the land vested in his parents."

So ended the First Chapter of the "California Raymond Jackson" litigation.

The pleadings at page 15 of the record disclose that on March 26, 1934, the "California Raymond" asked leave to

file a bill to impeach the decree of March 18, 1932, which bill was tendered with his application; that written objections were filed by the respondents to the granting of such leave; that on consideration thereof the court on March 26, 1934, entered an order granting petitioner leave to file his tendered bill to impeach decree but directed that within ten days thereafter petitioner file an amended bill confining the allegations thereof to the fraud relied on and that within the same time he file a motion to vacate the decree of April 18, 1932, based on the newly discovered evidence relied on. Within the time permitted petitioner, through one of his original attorneys, Kenneth B. Kienzle of Shawnee, Oklahoma, and three new attorneys—Glen O. Morris of Oklahoma City, Oklahoma; Herbert K. Hyde of Oklahoma City, Oklahoma; and Roy St. Lewis of Washington, D. C., filed an amended bill to impeach decree (R. 45-57), which was given docket No. 4537 Equity, and on the same day filed in Equity No. 3948 a motion to vacate decree. (R. 58-61) Both pleadings were directed at the original decree of April 18, 1932, and sought to have it impeached and vacated on the ground of fraud and newly discovered evidence. After appropriate pleadings were filed the matters were originally set for hearing before Judge Williams on April 27, 1934, but by agreement of parties the case was continued to May 1, 1934, at which time the introduction of evidence was begun. The record does not disclose that plaintiff asked for a continuance of the hearing for the reason that he could not produce any witness, or witnesses, or on any other ground. He went to trial on May 1, 1934, without suggestion of any sort that the hearing be postponed to a later date. It was agreed by all parties that evidence theretofore introduced in No. 3948 Equity and the other case consolidated therewith, including No. 4246 Equity, under which number the "California Raymond Jackson's" original petition was docketed, should be considered as introduced in evidence so far as competent and material in the consideration of petitioner's amended bill to impeach and his motion to vacate decree. On May 3, 1934, Judge Williams, having heard evi-

dence for approximately three days and both sides having rested, entered a decree dismissing with prejudice petitioner's amended bill to impeach decree and overruling his motion to vacate decree. (R. 61-65) It is interesting to note that neither Mr. Hyde nor Mr. St. Lewis appeared at the trial. It is apparent that after investigation both had abandoned the case.

In the decree so entered were incorporated certain findings of fact with reference to the fraud allegations contained in petitioner's amended bill to impeach decree, as follows:

> "7. That no testimony introduced by the interveners, A. S. Norvell, Spencer Norvell, Davis Jackson and Rhina Jackson, was fixed or framed, as alleged by the plaintiff in paragraph No. 12 of his bill to impeach the decree, or otherwise, and the plaintiff herein has produced no evidence to substantiate his charges made in said amended bill as follows: 'That witnesses were purchased and paid large sums of money to testify to matters on behalf of A. S. Norvell, Spencer Norvell, Davis Jackson and Rhina Jackson; that the railroad company records were altered and changed so as to show incorrect and false matters in regard to the circumstances surrounding the death of some negro near Blue Mountain, Arkansas. That through collusion and fraud the records of a certain cotton gin were forged and made so as to deceive this court in said mentioned action,' and that said plaintiff has produced no evidence to show that said interveners procured and induced witnesses to swear falsely as set out in said paragraph, or otherwise, and that the plaintiff has produced no evidence tending to prove that said interveners removed the body of the dead negro from Blue Mountain, Arkansas, for the purpose of deceiving this court."
>
> "10. The court further finds that the plaintiff in this hearing produced no evidence whatever to substantiate any allegation of fraud practiced by the inter-

veners, or The Carter Oil Company, or any of them, upon this court or against the plaintiff." (R. 63-64)

The court also found again that the "California Raymond Jackson" was an impostor, as follows:

> "11. The court further finds that the plaintiff herein, designated as the 'California' Raymond Jackson, is not the son of Davis and Rhina Jackson, or either of them, and is not the allottee of the land in controversy herein, and that he is an impostor." (R. 64)

To the decree entered pursuant to such findings petitioner excepted, and notice was given of appeal to the Circuit Court of Appeals for the Tenth Circuit. (R. 65)

The pleadings at page 17 of the record disclose that on July 27, 1934, an order was entered allowing an appeal by petitioner to the United States Circuit Court of Appeals for the Tenth Circuit; that on the same day a citation was issued to defendants in said case citing them to appear in the Appellate Court at Denver; that on September 4, 1934, the District Court enlarged the time within which petitioner might docket and perfect an appeal to November 4, 1934; that petitioner did not perfect such appeal, and that some time after November 4, 1934, the defendants in said proceeding made application to the Circuit Court of Appeals to docket and dismiss petitioner's appeal; that pursuant thereto such appeal was docketed in the Appellate Court as case No. 1175, and on November 28, 1934, an order was entered dismissing said appeal at petitioner's costs.

So ended the 1934 proceeding and the Second Chapter of the "California Raymond Jackson" litigation.

On July 26, 1937, the "California Raymond," through an entirely new set of attorneys—W. P. Smith, Marvin T. Johnson and Coakley & McDermott, all of Tulsa, Oklahoma, asked leave to file a bill of review to impeach decree of April 18, 1932, entered in No. 3948 Equity, consolidated, and the decree of May 3, 1934, in case No. 4537 Equity, consolidated, which bill petitioner tendered with his application.

(R. 65-72) Among the allegations of fraud contained in said bill it was alleged that Davis Jackson conspired with various witnesses who testified at the former hearings on behalf of defendants to produce and did produce perjured testimony to the effect that Raymond Jackson, his son, was dead; that since the former hearings the petitioner had found additional witnesses to support petitioner's allegations of fraud, among them being one Mattie Delores, mother of Buddie Delores, who was the boy actually killed in a train accident at Blue Mountain, Arkansas, and whose body the defendants claim to be that of Raymond Jackson; that various sums of money were paid to the mother of the deceased boy to permit defendants to claim the body of the deceased as that of "Raymond Jackson."

The pleadings at page 18 of the record disclose that on July 26, 1937, without notice to the defendants, an order was entered in No. 3948 Equity, consolidated, granting to petitioner leave to file his bill of review in said cause; that thereafter motions were filed by defendants to vacate the order granting leave to file bill of review; that subsequent thereto Charles A. Coakley and R. B. McDermott filed their application to withdraw as counsel; that under date of December 10, 1937, Marvin T. Johnson filed his application to withdraw as counsel; that said cause was set for hearing on the motion docket at Chickasha, Oklahoma, on December 16, 1937, but was stricken at the request of W. P. Smith, the only remaining attorney for petitioner. On March 14, 1938, the case came on for hearing on defendants' motion to vacate the order granting leave to file bill of review. Following the hearing on March 14, 1938, an order was entered in said cause vacating the former order granting leave to file bill of review. (R. 72-73)

So ended the 1937 proceeding and the Third Chapter of the "California Raymond Jackson" litigation.

The pleadings at pages 18-19 of the record disclose that on March 13, 1939, James A. Harris, as guardian of the so-called "California Raymond Jackson" filed in the

United States District Court for the Eastern District of Oklahoma a motion for leave to file complaint of review, which was docketed as No. 73 Civil; that without notice to defendants permission was granted by the District Court to the filing of such complaint. Thereafter, on April 6, 1939, an amended complaint was filed in said proceeding. (R. 73-101) It is in this proceeding that Mr. F. E. Riddle of Tulsa, Oklahoma, first appears as attorney for the "California Raymond Jackson," all of the numerous former attorneys having apparently abandoned the case. In said amended complaint it was alleged that the "California Raymond Jackson," on whose behalf the suit was filed, was the allottee of the land involved in the instant case; that defendants in said case, Davis A. Jackson, Rhina Jackson, A. S. Norvell, R. S. Norvell, and The Carter Oil Company, had theretofore wrongfully and unlawfully entered into a conspiracy with the intent and for the purpose of showing that Raymond Jackson, the son of Davis A. and Rhina Jackson, had been killed near Blue Mountain, Arkansas, when in fact they knew that the true allottee of the land and the son of Davis and Rhina Jackson was in fact living; that extrinsic fraud was practiced upon the court and upon the "California Raymond Jackson" in connection with the decree entered on April 18, 1932, in that witnesses were bribed to stay away from court and others were paid large sums of money to testify to a certain state of facts; that the only issue tried and determined at the hearing in May, 1934, was whether or not there was sufficient newly discovered evidence, and evidence showing fraud, to entitle the petitioner to impeach the decree of April 18, 1932; that the acts and the conduct of the respondents in obtaining the decree of April 18, 1932, constituted a crime under the Statutes of the United States, which fraud had been concealed from the petitioner and his counsel for many years after the decree was entered. In support of these allegations of fraud, 51 affidavits were attached to the amended complaint as exhibits. (R. 102-177) It is interesting to note that many of the exhibits so attached to the amended complaint were

affidavits taken by W. P. Smith, as United States Commissioner, who was the only remaining attorney for petitioner at the hearing of March 14, 1938.

The record at page 19 discloses that defendants filed their motion to dismiss said amended complaint, attaching to their motion, or by reference incorporating therein, the former decrees of the District Court denying relief to the "California Raymond Jackson." Thereafter and under date of December 2, 1939, and after a full presentation the respondents' motion to dismiss was by Judge KENNAMER sustained. Thereupon petitioner elected to stand on his amended complaint, and the same was dismissed with prejudice, and judgment was entered in favor of the respondents and against the petitioner for costs expended. (R. 177-178) In connection with the decree so entered Judge KENNAMER filed an opinion, wherein he found that there was no error in the record in pursuance of which the former judgments and decrees had been entered; that the allegations of extrinsic fraud were but a rehash of those presented in the former suit to impeach decree and which had been found to be without merit; that the "California Raymond Jackson" was a shrewd and designing individual and a fraud. (R. 179-184)

Pleadings at page 20 of the record disclose that from the order and decree of December 2, 1939, in No. 73 Civil an appeal was duly taken by the petitioner to the United States Circuit Court of Appeals for the Tenth Circuit; that the transcript on appeal was filed in the appellate court on May 29, 1940, and the case therein docketed as No. 2122; that thereafter F. E. Riddle, attorney for petitioner, was advised by the clerk of the Circuit Court as to the estimated cost of printing the record; that petitioner failed to make the required deposit to cover this estimated cost; that an order was entered by the Circuit Court on August 5, 1940, giving the petitioner until September 1, 1940, to make the deposit; that thereafter, upon request of petitioner, a further extension of time was granted to September 30, 1940; that petitioner failed to make the deposit, following which

an order was entered by the Circuit Court on November 18, 1940, dismissing the appeal for failure to prosecute.

So ended the 1939-1940 proceeding and the Fourth Chapter in the "California Raymond Jackson" litigation.

On November 19, 1943, a complaint was filed in the United States District Court for the Eastern District of Oklahoma on behalf of the "California Raymond Jackson" against Davis A. Jackson, Rhina Jackson, A. S. Norvell, deceased, and The Carter Oil Company, as defendants. This case was docketed under No. 1128 Civil. Thereafter an amended petition was filed (R. 1-10), wherein it was alleged that the Raymond Jackson on whose behalf the action was filed was the owner of the land involved in the instant case; that certain prior orders, judgments and decrees should be reviewed, vacated, set aside, and held for naught; that The Carter Oil Company and Davis A. Jackson had entered into a conspiracy to establish the allottee's death in 1921; that they aided in procuring false evidence and in the suppression of other evidence which would have established the identity of the petitioner as being the allottee; that during litigation resulting in the decree of April 18, 1932, B. B. Blakeney, an attorney for petitioner, withdrew from the case without the knowledge of petitioner and failed and neglected to perfect an appeal; that subsequent thereto Kenneth Kienzle, associate counsel in the case, procured one Jim Barnett, an attorney, to prepare said appeal and delivered to said Barnett the sum of $500.00 for the purpose of having a copy of the transcript of the record printed and filed in the appellate court and to prepare and file a brief in said cause; that said attorney, for causes unknown to petitioner, failed and neglected to perfect said appeal, which fact became known to him only after the dismissal of the appeal; that said conduct constituted fraud upon the petitioner; that in the year 1934 Kienzle filed a complaint in the United States District Court for the Eastern District of Oklahoma on the ground of newly discovered evidence for the purpose of impeaching the decree of April

18, 1932; that upon the hearing thereon no evidence of fraud was introduced nor was there any newly discovered evidence produced, whereupon the complaint was dismissed; that thereafter W. P. Smith, on behalf of the petitioner, obtained an order permitting him to file a bill in the nature of a review, to which the respondent, The Carter Oil Company, filed certain pleadings; that Coakley & McDermott, who were attorneys for petitioner, withdrew from said cause without notice a few days prior to hearing of motions filed therein, which resulted in action taken by the court on March 14, 1938; that Davis A. Jackson died in May, 1939, and up to the time of his death that Rhina Jackson was intimidated by him and thereby was prevented from making declarations of truth which she has since made; that immediately following the death of Davis A. Jackson, The Carter Oil Company, together with diverse others, intimidated the said Rhina Jackson so that she did not immediately make a full disclosure of the true facts; that Rhina Jackson has now made sworn statements setting forth the true facts which will be offered in evidence. On the grounds stated petitioner prayed for an order vacating and setting aside the decree of April 18, 1932, and the order of May 3, 1934. In this proceeding for the first time appear A. G. W. Sango and I. F. Bradley, Jr., as attorneys for petitioner, none of his former attorneys appearing of record.

To the amended complaint so filed the respondent, The Carter Oil Company, filed its answer, attaching thereto, or by reference incorporating therein, certain former pleadings and former decrees of the court denying relief to petitioner. (R. 10-21) Among the instruments attached to the answer of The Carter Oil Company was a copy of the amended complaint filed by the "California Raymond Jackson" in case No. 73 Civil, to which petitioner had attached as exhibits some 51 affidavits. It is these affidavits so attached to petitioner's amended complaint in case No. 73 Civil that petitioner in his petition for writ of certiorari in

the instant case refers to repeatedly as exhibits attached to respondents' answer.

The respondent, Rhina Jackson, through her attorneys, W. W. Pryor and Glenn O. Wallace, of Wewoka, Oklahoma, filed her answer, denying generally each, every and all of the allegations contained in the amended complaint and specifically denying that petitioner, the "California Raymond Jackson," was her child; also, she specifically denied the allegations in the amended complaint with reference to intimidation, coercion, and over-persuasion by Davis A. Jackson, deceased. (R. 185-186)

Other respondents filed their answer to the amended complaint through their attorney, W. M. Haulsee, of Wewoka, Oklahoma, specifically denying all allegations of fraud. (R. 186-189)

To the answers so filed petitioner filed his reply. (R. 189-200) Therein reference was made to a guardianship proceeding in the Superior Court of Los Angeles County, California, wherein a guardian was appointed for the "California Raymond Jackson" under the alias of "Willie Harjo," which adjudication of incompetency it was alleged had never been set aside. Petitioner further denied that he was bound by the orders, judgments and decrees referred to in respondents' answers by reason of the fraudulent and collusive conduct of counsel then pretending to represent petitioner and by reason of fraud of respondents.

Respondents filed motions for summary judgment (R. 204, 207, 208), following which an amended motion for summary judgment was filed. (R. 209-210)

On May 4, 1944, the cause came on for hearing upon amended motion of respondent for summary judgment. It was agreed by all parties that for the purpose of the hearing on said motions the copies of pleadings, orders and decrees attached to the answer of The Carter Oil Company should be considered as true copies of the originals. (R. 212) After argument of counsel, Judge Broaddus sustained respondents' motion for summary judgment, dismissed pe-

titioner's amended complaint and perpetually enjoined the so-called "California Raymond Jackson" from filing further suits or prosecuting further litigation against the respondents, or their successors in interest, based on the claim that he was Raymond Jackson, the allottee of the land involved. (R. 211-212)

From the decree so rendered notice of appeal was duly given by petitioner. (R. 213) However, the appeal was not perfected. Upon motion of respondents the cause was docketed in the Circuit Court and the appeal therein dismissed. (R. 213-214)

So ended the 1944 proceeding and the Fifth Chapter of the "California Raymond Jackson" litigation.

On March 31, 1945, the petitioner filed his motion to vacate and set aside summary judgment of May 4, 1944. Movent's attorneys were A. G. W. Sango and C. R. Nixon of Tulsa, Oklahoma, and I. F. Bradley, Jr., of Kansas City, Kansas. In said motion it was alleged that plaintiff had been denied a fair opportunity to present his case at the hearing on May 4, 1944, by reason of certain evidence of a documentary nature, which through fraud and collusion of an attorney representing the plaintiff was unexpectedly withheld by said attorney at the time of the hearing; that plaintiff since said hearing had come into possession of such documentary evidence and pictures and that the same were material for the complete prosecution of plaintiff's cause; that the documentary evidence consisted of affidavits of certain parties, which were attached to the motion as Exhibits "A," "B," "C," "D," "E," and "F"; that the pictures relied on were of the plaintiff, his mother, Rhina Jackson; his brother, Aaron, and his sister, Myrtle, which pictures were attached to the motion as Exhibits "A-1" and "B-2"; that at the time of the former hearing the information referred to was in the possession of one George Adams, an attorney who had represented plaintiff; that plaintiff went to Chicago to negotiate for the procurement of the affida-

vits and pictures, but that Adams stated that they were worth more than five thousand dollars ($5,000.00) to him but assured plaintiff that he, Adams, would be present and present such affidavits and pictures in open court; that plaintiff relied upon the statements so made by his former attorney, but that Adams failed to appear at the hearing on May 4, 1944; and plaintiff was not able to secure said newly discovered evidence until March 12, 1945; that plaintiff's application for a bill of review and his right thereto was justified on the basis of this newly discovered evidence. (R. 214-218)

Defendants therein filed their motions to dismiss. (R. 229-238)

On June 13, 1945, pursuant to regular setting, the matter came on for hearing on petitioner's motion to vacate and set aside summary judgment. C. R. Nixon having withdrawn as attorney, petitioner was represented at the hearing by Font L. Allen and A. G. W. Sango, attorneys of Tulsa, Oklahoma. The trial court proceeded to hear testimony on petitioner's motion. At the conclusion of the evidence, Judge Broaddus overruled and denied in all respects petitioner's motion to vacate and set aside summary judgment. (R. 239)

The cause was duly appealed to the Tenth Circuit Court of Appeals where it was briefed by appellant and appellees. Pursuant to regular setting, the case was argued orally before the appellate court. Thereafter and on August 6, 1946, a unanimous opinion of the Circuit Court was filed in the case affirming the action of the District Court in overruling and denying petitioner's motion to vacate and set aside summary judgment. (R. 243-247)

With Honorable Sam G. Bratton, Honorable Walter A. Huxman, and Honorable Alfred P. Murrah participating, and all concurring, judgment was duly entered so affirming the lower court. (R. 247) The petitioner seeks to have said judgment reviewed by his petition for writ of certiorari herein.

ARGUMENT *and* AUTHORITIES.

The reasons stated by petitioner for issuance of a writ of certiorari in this case are set forth on page 19 of his petition. Although set out as four in number, but one reason is advanced and that is fraud which petitioner claims was perpetrated upon him and the court in obtaining prior decrees and judgments. The ground relied on for asserting the existence of such fraud is the 51 affidavits which petitioner refers to repeatedly as being attached to the answer of respondent, The Carter Oil Company.

As heretofore shown in our statement of the case, the affidavits referred to were attached to petitioner's amended complaint in No. 1128 Civil, a copy of which pleading was attached as an exhibit to respondent's, The Carter Oil Company's, answer, as were also copies of other pleadings of like nature filed by petitioner in former cases. These pleadings, together with the judgments and decrees entered thereon, were of such nature as to convince the trial court that the issues attempted to be raised by petitioner had theretofore been fully adjudicated. Respondent's motions for summary judgment were thereupon sustained, and petitioner's amended complaint was dismissed with prejudice. (R. 211)

If, as now contended by petitioner, in his petition for writ of certiorari, the court erred in so dismissing his amended complaint with prejudice, his relief was by appeal to the Circuit Court of Appeals for the Tenth Circuit. He did give notice of appeal. (R. 213) However, the order entered in the appellate court shows that the appeal was docketed therein by respondents and not by the petitioner and that the appeal was dismissed. (R. 213-214)

By his petition for writ of certiorari the petitioner is asking the Supreme Court to review the judgment of May 4, 1944, when it is shown by the record that he did not see

fit to have said judgment reviewed on appeal by the Circuit Court of Appeals.

That he realized his rights were fully foreclosed on this score is shown convincingly by the motion later filed, upon which the hearing was had in this immediate proceeding. In his motion to vacate and set aside summary judgment filed on March 31, 1945, (R. 214-218) but two grounds were alleged upon the basis of which petitioner sought to have vacated and set aside the summary judgment of May 4, 1944. Those grounds were as follows:

(1) That one George Adams of Chicago, Illinois, an attorney representing petitioner, perpetrated a fraud upon him by failing to show up at the trial on May 4, 1944, with the affidavits and pictures which he had in his possession; and

(2) That petitioner was not able to obtain possession of said affidavits and pictures until March 12, 1945, and that the same constituted newly discovered evidence of such nature as to entitle him to have the summary judgment of May 4, 1944, vacated and set aside.

It was upon issues so presented that the matter came on for hearing on June 13, 1945. Although he attempts to question it in his petition for writ of certiorari the record clearly shows that petitioner presented evidence in support of his motion. (R. 239) There is nothing to indicate but that petitioner would have been permitted to present any further or additional evidence had he seen fit to do so. Even if petitioner were correct in his contention that no evidence was offered at the hearing on June 13, 1945, his position would not thereby be improved. So long as he was given ample opportunity to present his case, if he failed to support his allegations of fraud by competent evidence, he has no legal grounds to complain of the adverse action taken by the court.

Petitioner, having offered his proof and closed his case, the trial court was required to dispose of the matter one way or the other. This he did by overruling petitioner's

motion to vacate and set aside summary judgment. (R. 239) The order of the District Court in this regard was duly affirmed by the Circuit Court of Appeals. (R. 247)

Not only does the record in this case amply support the judgment of the Circuit Court of Appeals in so affirming the trial court, but it goes much farther. It clearly discloses that no other action properly could have been taken by the appellate court.

Under the Rules of the Supreme Court a review on writ of certiorari will not be granted merely to give the defeated party in the Circuit Court of Appeals another hearing. As stated in Section 5 of Rule 38, a review on writ of certiorari is not a matter of right but of sound judicial discretion and will be granted only where there are special and important reasons therefor. While not controlling or fully measuring the court's discretion, the rule sets out the following as indicating the character of reasons which will be considered as sufficient in cases involving a decision of a Circuit Court of Appeals:

> Where a Circuit Court of Appeals has rendered a decision in conflict with a decision of another Circuit Court of Appeals on the same matter; or has decided an important question of local law in a way probably in conflict with applicable local decisions; or has decided an important question of general law in a way probably untenable or in conflict with the weight of authority; or has decided an important question of federal law which has not been but should be settled by the Supreme Court; or has decided a federal question in a way probably in conflict with applicable decisions of the Supreme Court; or has so far departed from the accepted and usual course of judicial proceedings or so far sanctioned such a departure by a lower court as to call for an exercise of the Supreme Court's power of supervision.

There is nothing in the instant case to disclose special or important reasons which call for the exercise of the Su-

preme Court's power of supervision. This Court has held on more than one occasion that it will not grant a writ of certiorari merely to review evidence or inferences to be drawn therefrom. One such case involving rights of parties arising under different patents is *General Talking Pictures Corporation* v. *Western Electric Company,* 304 U. S. 175, 82 L. ed. 1273. Mr. Justice BUTLER, speaking for the Court, in this regard says:

> "There is nothing in the lower court's decision on either of the added questions to warrant review here. Whether respondents acquiesced in the infringement and are estopped depends upon the facts. Granting of the writ would not be warranted merely to review the evidence or inferences drawn from it. *Southern Power Co.* v. *North Carolina Pub. Serv. Co.,* 263 U. S. 508, 68 L. ed. 413, 44 S. Ct. 164; *United States* v. *Johnston,* 268 U. S. 220, 227, 69 L. ed. 925, 926, 45 S. Ct. 496. Moreover, the decision on that point rests on concurrent findings. They are not to be disturbed unless plainly without support. *United States* v. *Chemical Foundation,* 272 U. S. 1, 14, 71 L. ed. 131, 142, 47 S. Ct. 1; *United States* v. *McGowan,* 290 U. S. 592, 78 L. ed. 522, 54 S. Ct. 95; *Alabama Power Co.* v. *Ickes,* 302 U. S. 464, *ante* 374, 58 S. Ct. 300."

There are a number of cases to like effect decided prior to the Amendment of 1925 of Section 240 of the Judicial Code. Although it is doubtful whether the rule theretofore laid down will longer be applied so strictly since the enactment of said amendment, prior decisions are not entirely obsolete. One such case is *Magnum Import Company* v. *Francois Joseph De Spoturno Coty,* 262 U. S. 159, 67 L. ed. 922. Therein Mr. Chief Justice TAFT, for the Court, says:

> "The question how the court should exercise this power next arises. The jurisdiction to bring up cases by certiorari from the Circuit Courts of Appeals was given for two purposes: *First,* to secure uniformity of decision between those courts in the nine circuits;

and, *second,* to bring up cases involving questions of importance which it is in the public interest to have decided by this court of last resort. The jurisdiction was not conferred upon this court merely to give the defeated party in the Circuit Court of Appeals another hearing. Our experience shows that 80 per cent of those who petition for certiorari do not appreciate these necessary limitations upon our issue of the writ."

See, also, *Southern Power Company* v. *North Carolina Public Service Company,* 263 U. S. 508, 68 L. ed. 413, wherein the following is quoted from the opinion of Mr. Justice McReynolds:

"This writ must be dismissed. The petition therefor stated that the cause involved a grave question of vital importance to the public, and alleged as special reason for its re-examination that the decree would deprive petitioner of property without due process of law, and of freedom to contract, contrary to the Federal Constitution. The opinion below is reported in 33 A. L. R. 626, 282 Fed. 837.

"The argument developed that the controverted question was whether the evidence sufficed to establish actual dedication of petitioner's property to public use —primarily a question of fact. That is not the ground upon which we granted the petition, and, if sufficiently developed, would not have moved us thereto."

No valid reason is advanced by petitioner to justify a review by this Court of the judgment of the Circuit Court of Appeals on writ of certiorari. As stated in the case of *Magnum Import Company* v. *Francois Joseph De Spoturno Coty, supra,* jurisdiction was not conferred upon the Supreme Court merely to give the defeated party in the Circuit Court of Appeals another hearing.

Conclusion.

No one can say that petitioner has not had his day in court. Two times and at great length his case was tried before Judge WILLIAMS. Three years after Judge WILLIAMS' second judgment against him, petitioner tried again to impeach the former decrees, but the district court refused him permission to file a bill of review. Two years later Judge KENNAMER was called upon to pass on petitioner's claim. Four years after Judge KENNAMER had held against him, petitioner attempted to relitigate his claim again, this time before Judge BROADDUS. Two years after Judge BROADDUS' first judgment against him, petitioner made his sixth effort. This time Judge BROADDUS again entered an order against him. Added to all these is the judgment of the Circuit Court of Appeals for the Tenth Circuit, unanimously affirming Judge BROADDUS in the last of the six cases.

Surely there should be an end to litigation of this nature. So long as his case is pending in the courts, petitioner is in position to enlist new financial backers. The record discloses that his activities in this regard have not gone unrewarded—that is, in so far as petitioner is concerned. Lucretia Bivans happened to be one whose interest he succeeded in enlisting. To her lasting misfortune she was named guardian for the petitioner by the County Court of Tulsa County, Oklahoma. Her final report as guardian (R. 26-33) discloses that in the very short period of time between April 10, 1940, and July 12, 1940, while receiving nothing in her capacity as guardian, she expended out of her own funds a total of $14,046.98, most of which was money paid out to the petitioner himself.

The District Court has done its best to put a stop to the further maneuvering of this petitioner. The Circuit Court of Appeals for the Tenth Circuit has placed its stamp of disapproval upon the use of the courts for the purpose of furthering a racket such as has been through the years perpetrated upon the lawyers and laymen of Oklahoma and other

states by this petitioner. We feel confident that this Court will promptly terminate this harassing litigation.

Petition for writ of certiorari in this case should be denied.

Respectfully submitted,

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